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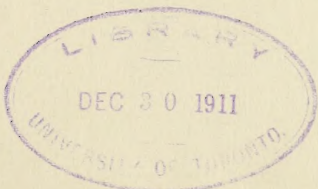
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SOCIAL SCIENCE SERIES

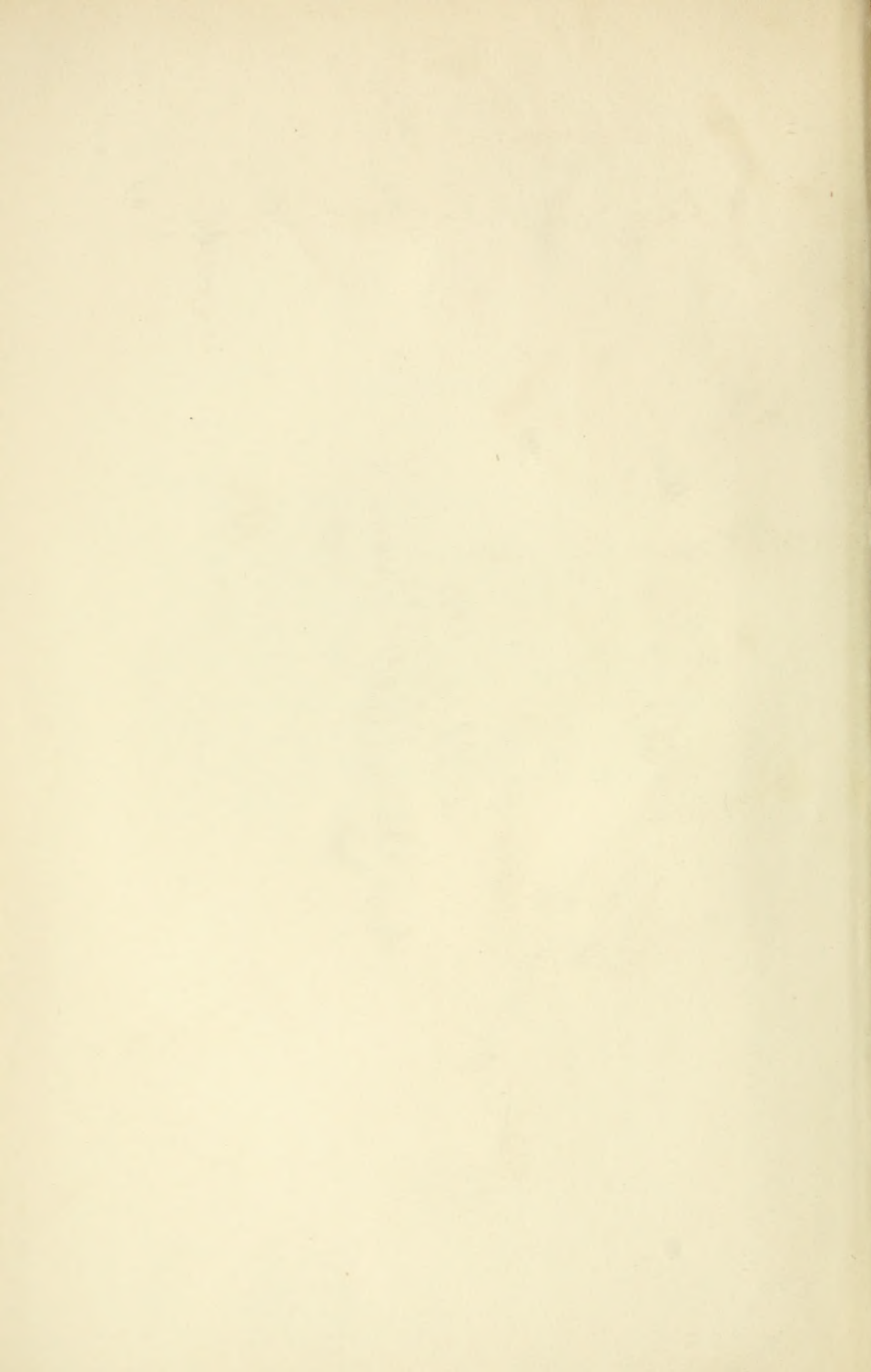
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CONTENTS

NUMBER	PAGE
1. The Social Function of Religious Belief, by WILLIAM WILSON ELWANG, PH. D.....	I
2. The Origin and Early Development of the English Universities to the Close of the Thirteenth Cent- ury, by EARNEST VANCOURT VAUGHN, A. M., <i>In-</i> <i>structor in History</i>	105
3. The Origin of the Werewolf Superstition, by CARO- LINE TAYLOR STEWART, PH. D., <i>Assistant Professor</i> <i>of Germanic Languages</i>	253
4. The Transitional Period, 1788-1789, in the Govern- ment of the United States, by FRANK FLETCHER STEPHENS, PH. M., PH. D., <i>Instructor in American</i> <i>History</i>	291



I
THE SOCIAL FUNCTION OF
RELIGIOUS BELIEF

VOLUME II

SOCIAL SCIENCE SERIES

NUMBER I

THE
UNIVERSITY OF MISSOURI
STUDIES

EDITED BY

W. G. BROWN

Professor of Chemistry

THE SOCIAL FUNCTION OF
RELIGIOUS BELIEF

BY

WILLIAM WILSON ELWANG, Ph. D.



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1908

TO THE MEMORY OF

My Wife

WHOSE BODY SLEEPS BENEATH SOFT SOUTHERN SKIES

WHOSE SOUL RESTS IN THE BOSOM OF GOD

I DEDICATE THIS BOOK

TABLE OF CONTENTS

PART I

THE NATURE OF RELIGION

CHAPTER I.	THE PSYCHOLOGICAL ASPECT OF RELIGION . . .	I
II.	THE PHILOSOPHICAL ASPECT OF RELIGION . . .	7
III.	THE SOCIOLOGICAL ASPECT OF RELIGION . . .	17

PART II

THE SOCIAL FUNCTION OF RELIGION

CHAPTER IV.	RELIGION AS A CONSERVATIVE FORCE . . .	44
V.	RELIGION AS A PROGRESSIVE FORCE . . .	74
VI.	THE RELIGION OF THE FUTURE	94
	WORKS OF REFERENCE	101

PREFACE

From a sociological point of view it cannot be said that religion has had fair or even adequate treatment. The theologians, of course, concerned with the revealed religions only, always handle the subject as something more or less extraneous to the "natural man." The sociologists, curiously enough, have usually been biased against their subject in their treatment of this, their greatest theme. Kidd, perhaps, comes nearest doing it justice. But even his viewpoint is too oblique. It is the purpose of this little monograph, written and accepted originally as a doctor's thesis in the University of Missouri, in 1905, but slightly expanded since, to do no more than, perhaps, point the way to the inevitably fairer and fuller treatment of religion from a purely social standpoint by future and more competent investigators.

Columbia, Mo., January 8, 1908.

W. W. E.

PART I

THE NATURE OF RELIGION

CHAPTER I

THE PSYCHOLOGICAL ASPECT OF RELIGION

Religion, using that term in its broadest sense, is co-eval with man.

There may have been a time in the history of the race when, the elements which compose it not having condensed themselves into that specific consciousness which we now call religious, religion was something indistinguishable from man's other experiences. But as far back, certainly, as history traces him, the evidences of his religiosity abound on every hand. And where history fails for lack of material, anthropology supplies abundant proof (megalithic monuments, painted bones, etc.), that religious ideas occupied the human mind probably as early as the Mammoth Age and certainly in the later Stone Age.¹ And when anthropology, in its turn, has pushed its investigations as far back into the dim past as even its adventurous spirit can penetrate, the new psychology takes up the uncompleted task and boldly postulates religion as a native human equipment, a psychological necessity.²

Further, and in logical sequence, it is now the practically unanimous conclusion of anthropologists to the time-worn discussion whether there ever was a people utterly destitute of religious feelings and ideas, that religion has always been coex-

¹ Goblet D'Alviella, Hibbert Lectures, 1891, p. 15 seq.

² Colvin, *American Journal of Psychology*, 1902, pp. 80-87.

tensive with the race. It is true that such recent authorities as Darwin,¹ Lubbock,² and Spencer,³ cling to the old notion that such peoples had existed and had actually been found. But neither Lubbock nor Spencer, as is well known, speak with first-hand knowledge on this point, but depend for their facts entirely upon the reports of others, usually unscientific travelers and missionaries; and Darwin can safely be ignored as an incompetent witness in matters like these. It is, however, surprising to find so distinguished a contemporaneous anthropologist as M. Topinard asserting that "There are nations and tribes without religion and without any mode of worship, and *who believe only in wizards or fetich*. It is true they make every form of superstition to subserve their religiousness. But some African or Melanesian tribes have not even superstitions,"⁴ But M. Topinard does not, it will be observed, specifically name the supposedly superstitionless tribes to which he refers so confidently. It would, indeed, have been an impossible task. And as to those which, he claims, are without any religion at all, the clause of his statement which we have italicized sufficiently indicates his false point of view. His superstitions are the religion of the savage.

Certainly, if by religion is meant a highly developed metaphysical system, or an elaborately organized cult, then, it must be admitted, many peoples, past and present, have never had any religion at all. But if the definition be made as broad as it should be, to include the crude mesh of superstition in which the Australian Blackfellows struggle, as well as the most highly developed form of Christianity, it becomes at once evident that there never was an organized fragment of human society anywhere without

¹ Descent of Man, p. 93.

² Pre-Historic Times, p. 574.

³ Principles of Sociology, II. 672.

⁴ Anthropology, p. 152

a genuine religion. Wundt's¹ curt remark that the assertion that there are non-religious peoples has about as much weight as the speculations about a speechless race, is entirely justified by the facts. Tylor's conclusion, of a generation ago, that "as a matter of fact the tribes are not found"² may still be regarded as authoritatively closing the discussion. There are no atheistic peoples. Wherever man is, there also is religion. It is a common possession of the race.

And these conclusions, that religion is both coeval and coextensive with the race, are strengthened by a consideration of the obscure problem of religious origins, using the word origin not in the sense of a starting point in time, but as cause or ground. In other words, the enquiry at this point is not historical, but psychological. The temporal origin of religion is veiled in the thick darkness of the prehistoric ages. The genetic-causal ground of religion is, however, always open to investigation.

We may dismiss at once, as totally inadequate, any and all theories that profess to find the genesis of so universal and complex a state of consciousness as religion in this or that single phenomenon or psychological moment. Max Müller well says that "We might as well derive the ocean from one river as religion from one source."³ The real beginning of religion is to be found neither in animism alone, nor in ancestor worship, euhemerism, the perception of the infinite, the inter-action of man's fears and hopes, nor yet in any or all of these combined. These are merely the earliest now discoverable manifestations of that mystery of thought, or rather, not to clothe it in too intellectualist a garb, let us say that mystery of craving in primitive man which we call religious. Religious practices and ideas are never religion itself. They are the explicit of what was already implicit in man. They express his religious

¹Ethik, p. 49.

²Primitive Culture, I. 418.

³Anthropological Religion, p. 117.

consciousness, the common essence, the residuum that would remain when they, the diverse outward phenomena, have been abstracted. But whence that consciousness? And what is its foundation principle? Historically it is now impossible to get back of the differentiation into secular and sacred, religious and non-religious. Is it possible to do so psychologically? Only conjecturally. The modern savage, whom we usually depend upon in our efforts to reconstruct primitive man is not a primitive man at all, but represents a plane of development already considerably beyond the initial stage. If, however, with this understanding, we reason analogically, we can safely say that religion is a form of reaction which developed from very early primitive unspecialized types of experience neither temporary nor accidental. For example, one of the elements of religion, as we know it in its higher forms, is love. This, with its roots deep down in the mere biological conditions of propagation is already somewhat differentiated in the maternal instinct, when, undoubtedly, the first new stirrings arise in the individual which impel it to project itself beyond itself; it is further developed in the maternal feeling; it is specialized still more by the rise of family relationships; it is cultivated by a multitude of other human ties, being gradually linked to one idea after another, such as that of the state, when it comes to expression as patriotism, sometimes with great fervor and devotion; and it finds, at last, its highest and most independent differentiation in religion, in the love of and devotion to God.

The real source of religion is to be sought in the nature and laws of the human mind. Religion is the product of that mind as influenced and controlled by the cosmic process of which it is a part. Adaptably the human mind was always religious; the solicitation to be religious came from without, or, otherwise put, religion is the result of an organic tendency and an external stimulus. Primitive man's conflict with his environment, when

awful forces threatened to overwhelm him, was doubtless the leading factor in the development of his religion. His sense of helplessness, it may safely be assumed, drove him to religion. His sense of imperfection, perhaps, lent a coordinate incentive. But behind all these feelings more or less closely connected with his relations to his environment, as a still more comprehensive element in the analysis, and minus which the nature without the man could not have influenced him at all, was the nature within the man himself, the causative instinct that made him not only feel helpless and imperfect and dependent but enabled him, by way of compensation, to mediate between the crises that presented themselves to him by urging him to establish relations with powers, or a Power, superior to himself in order to a more secure and confident existence; in other words, to become religious. Beyond this we cannot go, at least in the present stage of our knowledge, even though M. Topinard, in his suggestive little volume on Science and Faith insists upon carrying the analysis a step further by labelling that causative instinct the cerebral need for exercise¹—a phrase which really means nothing at all. Until we shall know something definite about the origin of mind and can more adequately correlate it with its environment, we shall be unable to track the religious principle, instinct or intuition in man to its final source.

From the sociological point of view it is, for our purpose, an adequate explanation to look upon religion as an essential equipment of human nature, which is now almost as much a part of man's psychical nature as the instinct for food is a part of his physical nature. It is a special human psychical aptitude, just as sucking is a special muscular aptitude of the mammalia, and functioning, like the latter, for survival. Of course, in the ultimate analysis, it must be admitted its origin lay in a mere rudimentary consciousness of individual utility, in an effort to over-

¹ Chap. viii.

come the disparity between desire and satisfaction. That is to say, the original, even as the present, bond between the worshipper and the worshipped was a very practical one. But it would be a mistake to characterize it on that account as fundamentally selfish. No normal instinct, broadly speaking, is a selfish instinct, and human instincts are preeminently social in their nature. Because man as man never lived in isolation, but always in social relations, it may also be said that religion sprang into being as a means of group preservation during a more or less prolonged crisis in the very early history of the race, when the struggle between the self and the species was really fought out and the victory won by the latter and "the great Human Problem of establishing and maintaining a sufficient unity of being" was put once for all in the way of a happy solution. Through the interaction of individual and individual, and individual and group, there came into existence a social consciousness from which, in turn, was developed that ideal content which we now identify as religious. And because it touched and controlled those springs of action most closely connected with social self-preservation, it is certain that religion must have established itself very early in human history.¹ And once successfully established as a social co-ordination, it persisted, became a habit, and finally developed into an instinct which manifests itself in a variety of outward forms in the life of individuals and in the social process. Historically religion is the result of race experience. Psychologically it is man's sense of ultimate values.

This view does not, it may be added, necessarily warrant the conclusion that religion is not or cannot be based upon a transcendental principle, and that it must, therefore, be explained as an illusion. This phase of the subject belongs to the theologian and metaphysician. We permit ourselves only one remark; neither physical nor psychical things lose their validity by the discovery and presentation of their origin and growth.

¹ W. Robertson Smith, *Religion of the Semites*, defends the view that all primitive religion was essentially communal, p. 246. De Coulanges' views on this point are well known—cf. *The Ancient City*, throughout.

CHAPTER II

THE PHILOSOPHICAL ASPECT OF RELIGION

It would, perhaps, be well to define at the very outset, if possible, the thing which we propose to discuss. But we do not indulge the foolish hope of condensing religion once for all into a bit of a formula. The time is probably not yet come for such a final definition, either descriptive or logical; and verbal definitions are, after all, only of secondary importance. But it ought to be possible to frame at least a tentative one that will answer the immediate purpose of this thesis, in which we are concerned, not so much with the philosophy of religion, as with its social significance. The sole question before us, let it be borne in mind, is what functions does religion subserve in society, understanding by society a psychically interacting group of people?

But perhaps our tread will be firmer in the end if we first review, briefly, some past attempts of eminent philosophical, theological, anthropological, and, especially, sociological thinkers to precipitate, so to speak, into a few words what the human mind seems always to have held in solution. Of course here, as in all controversial fields, definitions are numerous, divergent, and contradictory. The phenomena are so voluminous and complex that they seem to baffle logical arrangement. Individual thinkers seem always to have appreciated clearly enough some particular aspect of religion, as their mental structure inclined them to sympathy either with the affectional, intellectual or ethical element revealed by it. Too often, also, controversial exigencies and dogmatic requirements have had a baneful effect upon these efforts, and every kind of liberty has been taken not only with the word religion itself but with its connotations. A definition that is at once comprehensive and intensive enough is, perhaps, still a desideratum.

Philosophy seeks to interpret religion speculatively. It insists upon an effort to find its ultimate basis, the meaning which lies behind its phenomena and gives it a final justification. That is to say, when philosophy deals with religion as a special field of human experience its problem is the purely ontological one, not the more practical ones of sociological interest, namely, how does religion perform its functions; how is it related to other human activities; and what is its social value? Hence philosophical, more especially strictly metaphysical definitions have little if any bearing upon this discussion. Hegel's, that religion is "Beziehung des Geistes auf den absoluten Geist,"¹ may serve as the classical example. It means, if it means anything, that religion is a conscious relation of the finite spirit of God as the Absolute Spirit. Such metaphysical definitions nearly always vitiate their interest for the sociologist by confounding religion with a department of a theory of the universe. Thus, for example, Ritschl deliberately identifies them. Religion, he affirms, "is primarily a means of solving the problem of the world, and of man's relation to it." Ratzel² and Peschel³ connect it with man's craving for causality. But, surely, the need of explaining the universe as an intelligible whole by a sufficient principle of reason is one thing, while the religious tendency is quite another thing. The heart of religion, as we find it exemplified in fetishism as well as in Christianity, is a more or less definite personal relation between the worshipper and the worshipped. What common content has such an attitude with a *Weltanschauung*, a reasoned theory of reality?

Theology, as practically understood, has shown itself, strangely enough, even less competent to supply a definition of religion sufficient for the sociologist. Theology begins with authoritative

¹ Fischer, *Hegels Leben, Werke und Lehre*, II. 959.

² *History of Mankind*, I. 41.

³ *The Races of Man*, p. 245.

presumptions. It necessarily assumes a god, nay, it assumes the God, and from that starting point proceeds to develop a system of doctrine. But doctrine, in the ordinary sense of that word, is a very late product in religious development. Custom, worship, and ritual always precede it. Belief that can be clearly defined and organized is the product of long, slow growth. To this the doctrines of Christianity are no exception. It is therefore not surprising that definitions of religion by theologians as well as by some philosophers and others, solely in terms of belief, are inadequate from our standpoint.

Thus, according to Martineau's oft-quoted definition, religion is a "belief in an Ever-living God, that is, a Divine Mind and Will ruling the Universe and holding Moral relations with mankind."¹ It is evident that if religion necessarily involves a belief in so highly specialized an object as the God described by Martineau a vast majority of mankind always has been and still is non-religious. But this clear perception, which Hegel imperfectly shared, that religion involves a relationship of some kind between the Infinite and the finite, that it is a divine-human mutuality, is important. Such a relationship, more or less conscious, is absolutely indispensable to religion, differentiating it, indeed, from philosophy. In the highest known form of religion this consciousness becomes at last a conviction of kinship with the Divine: "Now are we the sons of God."

Among sociologists, Comte emphasized belief as of the essence of religion. He held that a belief in God was the chief, indeed, the only characteristic of the religion heretofore practiced by mankind. His view of what religion ought to be, and positivism really is, was, as expounded by Caird,² "a harmony of existence, in which all its elements are fitly co-ordinated." This harmony is produced by the regulation of egoistic motives, the

¹ *A Study of Religion*, I. 1.

² *The Social Philosophy of Comte*, p. 25.

adaptation of men to each other, and their submission to and affection for a superior power.

Spencer, pure intellectualist that he was, and waging a constant warfare against all metaphysics, more especially the theological kind, is nevertheless constrained to define religion as an abstract belief in "the omnipresence of something which passes comprehension,"¹ a "something" which he afterwards identifies as Power. This places religion upon an intellectual basis. Holding, as he did most strenuously, that men are bound to the relative and conditioned, the rationale of the universe nevertheless drove him irresistibly to assume something beyond it. But, in thus admitting an ultimate intuitive metaphysical belief Spencer completely nullified his theory of dreams, doubles, and ghosts, upon which he lays so much stress in his theory of religious origins.

Lubbock, in his classification of the religions of the world, arranges them according to the kinds of beliefs that characterize them, and concludes that the conception of the deity is the most reliable test of religion.² Tylor's minimum definition is almost too well-known to be repeated; religion is a "belief in spiritual beings." This would seem to exhaust the analysis in this direction. But Lang³ argues, plausibly enough, that the idea of God may have existed without involving the idea of a spirit. "God may be prior in evolution to ghosts."³ Lang himself defines religion as "a belief in a primal being, a Maker."

To define religion merely as belief and to let it go at that, is to overlook both the necessity of a recognized relationship of some sort to the object believed in, without which there can be no religion at all, as well as the characteristic impulsive and emotional elements of religion.

¹ *First Principles*, p. 45.

² *Origin of Civilization*, p. 209.

³ *Myth, Ritual and Religion*, I. 310.

Recognizing this D'Alviella, though he still names belief as of the essence of religion, emphasizes the devotee's sense of relationship to his divinity. He understands by religion "*the conception man forms of his relations with the superhuman and mysterious powers on which he believes himself to depend.*"¹ He thinks this definition "sharply defines the sphere of religious phenomena" and "indicates the common and essential character of all religious manifestations." Elsewhere he defines religion as "the belief in the existence of super-human beings who interfere in a mysterious fashion in the destiny of men."

Professor Simmel still more thoroughly combines these two aspects. He emphasizes belief in God as the very substance of religion but insists that, in order to be religious, such a belief must not only mean the intellectual acceptance of God's existence, but must imply also "a certain subjective relation to him, a going out of the affections to him, an attitude of life;" Religion, therefore, "is a peculiar mixture of faith as a kind of method of knowledge with practical impulses and feelings."²

Sometimes religion is confounded with ethics. This is due perhaps to the fact that while it is possible to conceive of religion as wholly apart from ethics, and while there have been religions which did not foster morality, or even were hostile to it, at least as we now understand it, the assertion holds that religion always affects life, practical life, in that it guides and controls man's relations to his fellows. Ethics lies in the germ in even so low a religion as that of the Australian Blackfellows, and in the highest known forms it actually seems to merge at last into it—the moral and religious sentiments coalesce. It is not surprising, therefore, that some eminent thinkers have been led to postu-

¹ Hibbert Lectures, 1891, p. 47.

² A contribution to the Sociology of Religion, American Journal of Sociology, Nov. 1905, p. 366.

late the identity of the two. Leibnitz belongs here. According to Faickenberg,¹ he held that "Enlightenment and virtue are the essential constituents of religion." "Probity and piety are the same." But the classic example here, of course, is Kant. And this is just what we would be led to expect from the earnest and austere sage of Königsberg, remembering his strenuous, if not always successful efforts all along the line to guide our human reason out of the barren wastes of metaphysics. We are not surprised, therefore, to find him defining religion as "das Erkenntniss aller unserer Pflichten als göttlicher Gebote,"² thus reducing it, to all intents and purposes, to a mere schedule of moral maxims, and necessarily excluding even worship from its sphere. Such a definition inevitably suggests a number of difficulties. Whence this knowledge? which, by the way, is a mere exchange of terms for belief. Theoretically a "categorical imperative" may be a sufficient answer, but practically we all know that such a severe and abstract view of duty, though possibly a spring of action for a select temperament here and there, has never been a sufficiently strong incentive for the many. Men may know a duty and even recognize it as a divine command, yet no form of action or conduct will result from such knowledge. Nothing is truer than that knowledge of the good does not necessarily imply inclination or power to attain it. In other words, must not feeling prompt obedience to the commands and will execute them? And it is precisely for the proper adjustment of man's will to his moral sense that religion is needed.

According to Professor Morris Jastrow,³ man's moral sense determines his religious beliefs, and not vice versa. Primitive man, he asserts, must have had ethical qualities before he thought of ascribing them to his gods. But Professor Jastrow

¹ *History of Modern Philosophy*, p. 287.

² *Sämmtliche Werke*, VI. 252.

³ *The Study of Religion*, p. 204 seq.

does not define those primitive ethical qualities. Was the feeling of obligation, no matter how indistinct, one of them? Then would it not be just as true to say that primitive man must have had gods before he had gods? But, once the bond between religion and ethics has been established, religion stimulates the ethical sense, and men become merciful, just and truthful, no longer through mere expediency, but to secure the goodwill of the superior powers. This is, of course, indisputably true, but Professor Jastrow's method of reaching this conclusion reveals a curious confusion of thought. He holds that the most primitive men were inclined to be merciful, just and truthful, because it was expedient, either for them individually or for their group life, because the life-process demanded such behavior, but that later "more urgent considerations" often set aside such an impulse, and a more efficacious one was then superstitiously invented, and men acted mercifully, justly and truthfully for the sake of their gods. And this process Professor Jastrow calls "stimulating the ethical sense." To one who has no theory to defend it looks much more like an expansion of the religious sentiment at the expense of the ethical. At first men were merciful *et cetera*, simply because it was expedient. That is certainly natural ethics, pure and simple. Then later, after men had fashioned their gods, they acted mercifully *et cetera*, because it pleased those gods to have them do so. But that is surely a purely religious motive. And it is the growth of this motive, the very efflorescence of the religious sentiment, which is described as a stimulation of the ethical sense. Professor Jastrow does not accurately distinguish between religion and morality. The former always bows to an authority extraneous to man's will, the latter is a feeling of worth relative to a changing social ideal.

He rightly goes on to say that it is doubtful whether morality would ever have amounted to much without religion. "Such a system," he affirms, "would have lacked certain qualities which mankind could ill afford to spare." That is to say, while what

is recognized as natural morality, with its basis in instinct and developed by natural selection, is undoubtedly one of the pillars of the primitive social structure, it never was and never could be the main support, what the Germans would call Träger, of organized society as it exists among mankind. Natural moral motives will not, at least for any length of time, provide the order which society requires for its wholesome development. "The theory that the moral instincts beget control has a distressing lack of finality." Why? Because these instincts do not and cannot supply a sufficient basis for unconditional authority.¹ Moral sanctions must have a transcendental basis. Morality stands or falls with God. Consequently natural ethics, in spite of itself, is continually inventing something to take the place of the religious sanctions which it would have us discard.

Turning to history for a determination of the relation between ethics and religion, we find that there are no instances of the existence of either of these factors without the other. So far as historical materials and contemporaneous testimony are available, religion and morality are co-existent and co-operative, the twin offsprings of a primitive undifferentiated unity. And, logically, morality is, of course, implied in religion. Theoretically, the one can always be separated from the other, but practically they are always co-related in life, at least to some extent. It is impossible to distinguish the ethical from the religious in the early expressions of childhood.² For scientific analysis the moral consciousness may be separated from the totality of consciousness, but it cannot be comprehended even then unless its environment, and certain other and higher elements, are taken into consideration. Morality and religion are two aspects or activities of one developing life. They are sociologically and psychologically closely interdependent.

¹ Cf. Darwin, *Descent of Man*, p. 112, note.

² Baldwin, *Social and Ethical Interpretations*, p. 328.

We turn next to a class of thinkers and investigators who have approached the subject from still another visual angle, the psychologists, whose efforts have been, in the main, to put religion, even in its doctrinal development, upon a purely emotional basis. It is nothing, it is claimed, but an affective element, such as dependence, fear, hope. Schleiermacher was probably the first writer of eminence to turn attention in this direction. In his famous *Christliche Glaubenslehre* he expounded the view that religion was "neither knowing nor doing, but an inclination and determination of our sentiments, which manifests itself in an absolute feeling of dependence on God." Wundt defines it as all representations and feelings which relate to an ideal state.¹ Both of these writers, and they are representative, err in viewing religion from a purely individualistic standpoint, thereby leaving no room whatever for its important social aspect. According to Schleiermacher religion seems to exist simply because the individual needs it. According to Wundt it exists because it satisfies the self. In other words, the subjectivism in religion is so exaggerated that it cannot but lead to an extreme individualism and an inevitable lack of interest in social affairs. It is the old theological idea of "personal salvation" in a new and less attractive garb. It may be added, also, that this view yields all too readily to the conclusion that religion may be, after all, a species of hallucination. That is to say, such a purely subjective religion is too easily bleached out by adverse experience in life, or is too readily driven out by hostile criticism. If the philosopher and theologian have erred by too great an emphasis upon the intellectual element, the psychologist is no less in error when he assigns such a preponderating or unique place to the emotions in religion. The feelings are, certainly, a very large factor in the religious consciousness, especially in savages, but they do not exhaust its content. It is the assumption that they do which vitiates the Ritschlian theology,

¹ *Ethik*, p. 48.

and the new Parisian school's extension of it. Sabatier's message, delivered with all the grace and style peculiar to a true Frenchman, is "salvation by faith independent of beliefs," because "the essence of religion lies in the sentiment or movement of the soul laying hold of God," to which it is impelled by "the feeling of dependence which every man experiences with respect to universal being."¹ Baldwin, it may be added, defines religion as "*emotion kindled by faith*,"² a definition which itself needs to be defined, for he immediately adds, "emotion being reverence for a Person and faith being dependence upon him." This seems to imply that the intellectual element of cognition of the Person revered is not properly a part of religion at all, which begins only with reverence for and dependence upon him.

Max Müller is perhaps best placed in a class by himself. He sees in religion "a mental faculty which, * * * enables man to apprehend the infinite."³ This "faculty" he describes as a power independent of sense and reason, even to some extent contradicted by sense and reason, but a very real power. Now aside from the doubt cast upon this definition as soon as we try to reconcile systems like totemism and fetichism with an apprehension of the Infinite, it is, certainly, nothing short of heroic to attempt, in these days, to try to solve the entire problem by returning to a discarded psychology and postulating a distinct religious faculty; though it is only fair to add that with Müller a "faculty" signifies merely "a mode of action."

Kidd's definition is, in its way, as unique as Müller's. It runs as follows:

"A religion is a form of belief, providing an ultra-rational sanction for that large class of conduct in the individual where his interests and the interests of the social organism are antag-

¹ Outlines of a Philosophy of Religion, p. 22

² Social and Ethical Interpretations, p. 357.

³ Origin of Religion, p. 21.

*onistic, and by which the former are rendered subordinate to the latter in the general interests of the evolution which the race is undergoing."*¹

Though this elaborate definition is expressly of religion as a social phenomenon only, it does not appear to be adequate even in this restricted sense. According to this definition religion is of value, both to the individual and society, only in connection with "that large class of conduct in the individual where his interests and the interests of the social organism are antagonistic." For some individuals, then, those of a specially self-centred or contrary stripe, it is conceivable that religion would be needed in well-nigh all the concerns of life; for others it would apply only at certain points of their contact with society, or at certain intervals; while for others, again, it would not be needed at all, simply because they are never conscious of this antagonism between their individual interests and the larger interests of society; and it is further conceivable that a time might come in the evolution of things when, the final vestiges of antagonism between the individual and society having been eliminated altogether, religion would necessarily disappear because it would no longer be needed, because its chief and only social function as peacemaker would no longer apply. But this is precisely the possibility which Kidd will not admit. On the contrary, religious beliefs "so far from being threatened with eventual dissolution they are apparently destined to continue to grow with the growth and to develop with the development of society."² Why? Because "the most profoundly individualistic, anti-social, and anti-evolutionary of all human qualities is one which, other things being equal, tends to be progressively developed in the race, namely, reason."³ According to Kidd the antagonism between religion and reason is therefore forever irreconcilable.

¹ Kidd, *Social Evolution*, p. 111.

² *Ibid.*, p. 124.

³ *Ibid.*, p. 314.

CHAPTER III

THE SOCIOLOGICAL ASPECT OF RELIGION

We have now passed in brief review some of the most characteristic definitions of religion. We have pointed out what we conceive to be their shortcomings, and sought to recognize the truth in each, growing, for the most part, out of the dogmatic and speculative methods. None of them seems to be sufficiently extensive, certainly not from the standpoint of the sociologist. But we are not yet ready for the formulation of our own conception of what religion is. We must first pass to a consideration of the function of religion in human society as others have conceived that function. From what we know of the universality and prominence of the religious attitude among mankind it may be supposed to play an important and useful part in the development of society. What end then does religion conserve?

As before, we will first hear what others have said on this point, only in this instance, confining ourselves entirely to the views of anthropological and sociological writers as alone of interest for the purposes of this discussion.

To this class belongs, first of all, Auguste Comte, *clarum et venerabile nomen*, that of the pioneer of modern sociological science.

In attempting to describe and set a value upon Comte's theory of religion we must keep in mind that, like all other pathfinders in the wide wilderness of thought, he was distinctly the child of his age. He was typically French. His theories were largely the condensed *Zeitgeist* of post-revolutionary France. He wrote at a time when the inevitable reaction against the extreme theories that had given France the guillotine, theories represented by Rousseau, had already made itself felt. For Rousseau the individual was everything, society nothing. For Comte society was everything

and the individual nothing. He saw clearly that individualism spelled anarchy, and meant the dissolution of society, and that, if there was to be civilization, its primal requisite must continue to be a true social sympathy. The development of this sympathy he sketched with characteristic one-sidedness in the *Philosophie Positive* by the application of the "law" of the three stages, which, of course, is no law at all, but merely an extremely schematic presentation of historical facts.

The first promptings of this sympathy, he claims, were made manifest in the theological form, as fetichism. But, since all theology was really built upon negations instead of positive truths, since it merely set up a god whom men ought to obey but could and did disobey, it could not permanently maintain the social order and gradually passed away¹. Nevertheless, in its time and way, it performed a "high social office." Its chief function was the primary step in the organization of society, the restraint of "individual eccentricity." It also provided for the "permanent existence of a speculative class."² But its "powerlessness for future service" is apparent.³

But the decay of theology, with its convenient supernatural volition as the sole type of causation, left a void in human thought which had to be filled. In due time, therefore, it was succeeded by another system, a weapon of attack, it is true, upon the old, a distinct step in advance, but of "much less intense social power,"⁴ and in the end equally impotent, the metaphysical philosophy, which merely put substantialized abstractions with no positive validity in the place of the older theological God. This abstract metaphysics, in its turn, necessarily gave way, in a developing society, to the last, the permanent system in the threefold series of prog-

¹ *The Positive Philosophy*, Martineau's trans., pp. 431, 435.

² *Ibid.*, p. 528.

³ *Ibid.*, p. 402.

⁴ *Ibid.*, p. 533.

ress, the system which Comte himself inaugurated, but whose rudiments existed from the beginning,¹ and which will henceforth conduct man's improvement along entirely different lines of thought. Theological and metaphysical interpretations of the universe and man are renounced in this stage, and experience alone, directed by science, is relied upon as amply sufficient to lead man to the highest possible good. That is to say, man himself, without the intervention of any supernatural order of things, can work out his own salvation.²

Now how, according to Comte, is this to be done? The answer, in the light of Comte's fundamental conception that the law of human progress is an intellectual one, is interesting and instructive. Man's progress is to be brought about in the future, as in the past, by means of religion, which, rightly understood, is a sense that man is in the hands of a superior power. Comte freely admits that, in the past, religion, as a belief in God, provisionally directed the evolution of mankind. But this God was only a kind of vice-regent until the revelation of the real God, the "Grande Être," made him unnecessary and demanded his dethronement. When this revelation shall finally have taken place everywhere religion will have reached its fullest development and achieved its highest ends, the subjection of individual caprice and passion to social reason and law, and the subordination of personal instincts to the satisfaction of social tendencies. All this will be accomplished by harmonizing and placing in their proper organic relations to each other the will, the intelligence, and the heart, and consequently their corresponding forms or instruments of social salvation, the family, the state and the church. It will be the business of the latter, through its priesthood, to "modify the wills, without ever commanding the acts of men," in order to preserve the solidarity of mankind against the selfish interests of individ-

¹ Ibid., p. 531.

² Ibid., p. 431.

uals and groups. The church will represent the continuity of the life of humanity in the past and future, as against the claims of the hour. Her duty will be to make and keep men conscious of the fact that their activities are social functions, to keep them reminded that they must so live that they will add to the good which subsequent generations will enjoy. A religious life, according to Positivism, means so to act that an ever richer and more harmonious social existence will be realized by future generations, and complete satisfaction to man's many-sized nature be secured.

For our purpose it is not necessary to continue the exposition of the system beyond this point.

Now, the significant thing for us to note, is the place assigned by Comte to the religious factor in his scheme of the development of social life and activity. With all his bias, he generously accords to the superstitions of the past a large part in the good work of progress. He recognizes clearly that religious belief, infinitely varied in form but unique in essence, has been the very main-spring of human life. Indeed, is not the great law of social dynamics traced in history by a succession of religious forms? In harmony with the imminent teleological principle which controls the Comtist philosophy, fetichism and polytheism were both socially useful. The former is said, however, to have been but a "feeble instrument of civilization," even though, "as to its social influence" "it effected great things for the race," being concerned in the institution of property and the permanent use of clothing, thus stimulating both industry and morality. Polytheism, by developing priesthoods, always relatively leisure classes, stimulated the study of science, art, and industry. Its efficiency is above all conspicuous in relation to the promotion of personal and social morality. The wholesome social effects of Catholicism, especially during the Middle Ages, are acknowledged and often almost fulsomely praised. "But its provisional nature is evident from the fact that the developments which it encouraged were the first

causes of its decay." Its chief use was to prepare the social elements for the positive regime.¹

Man must, and therefore always does worship something. The calamitous mistake of the past has been to try to find an unknown and unknowable God, though even so the effect has been to some extent wholesome. Cosmical and physical laws cannot be worshipped. Hence the reasonableness, yes, the necessity, for the worship of Humanity, the *Grande Être* of whose existence and activity there can be no doubt. But what does this very phrase "*Grande Être*" imply? Is it not a metaphysical conception, a hypostatized Humanity? In a somewhat new and rather fantastic garb it is simply the old idea of the "absolute." Comte very clearly recognized that there was no inspiration to be got from mankind in the mass, but only, if at all, from its noblest and best representatives. Hence his *Politique Positive*, with what Huxley described as its "Catholicism without Christianity"; its interesting calendar of saints; its celebration of the memory of mankind's benefactors; and its vapid immortality in others. So complete, indeed, becomes the approximation to Catholicism that life is said to be a period of probation at the close of which reward or punishment is meted out according to desert.² Thus was Comte driven by the inevitable development of his own thought, to the conclusion that without some kind of religion mankind cannot enjoy its fullest possible life. Without at all intending it at the beginning the end of his system is the inevitable religious synthesis, subjective and relative, if you please, but religious nevertheless. So complete, indeed, is the synthesis that it supplies an "ecclesiastical institution" as thoroughly organized as that of Rome, with Comte himself as the high priest thereof! It required but a very brief extension of his thought to land him in the very place from which he so laboriously strove to dislodge philosophy

¹ *Ibid.*, p. 402.

² Lévy-Bruhl, *The Philosophy of Auguste Comte*, p. 339.

and religion. As a matter of fact, after all Comte's efforts, the sum total of his achievements in this direction was to substitute the Grand Être in the place of God. His latest ambition, as he himself tells us, was to render "to his race the services of a St. Paul." The logicity of the reasoning which led him around such a circle need not concern us. Its significance lies in the fact that, unlike his predecessors of the Enlightenment, he saw distinctly and was courageous enough to affirm that negations are not enough, that a positive force is needed, and that in his search for it he reproduced, under another name and in a new dress, the great principle which he first felt himself so vehemently impelled to attack. To quote a distinguished exponent of Comtism: "the definitive unity of the individual will be reached through devotion to this true Great Being, whose existence and attributes no scepticism can dispute, and whose constant benefits, when rightly appreciated, must excite gratitude and love. Religion, appealing to and fortifying the altruistic principles in our nature, calls upon us to suppress every internal movement and abstain from every act which is opposed to the maintenance and development of the life of Humanity, and to cultivate all the tendencies that promote Her well-being and further Her work."¹ Comte himself, in so many words, restricted the function of religion to conservation, during the theological and metaphysical periods, and as plainly extended it during the positive. This his disciple recognizes and therefore, like his master, places man finally under the domain of the heart. In the last analysis the religion of positivism rests upon an emotional principle.²

Let us turn next to consider the views of a thinker whose influence, though already perceptibly waning, gave a powerful impetus to sociological investigations a generation ago. We refer to Herbert Spencer, the second great name in sociology.

¹ Ingram, *Human Nature and Morals*, p. 53.

² Cf. Lévy-Bruhl, *The Philosophy of Comte*, p. 333.

According to the First Principles, the vital element of all religion has, from the very first, been its recognition of that supreme verity, the "deepest, widest, and most certain of all facts—that the Power which the Universe manifests to us is utterly inscrutable."¹ Religion, in fact, is an "indefinite consciousness of existence transcending relations." This consciousness "is a constituent in man's nature," and is "as normal as any other faculty."² It must, therefore, be in some way conducive to human welfare. Now, one may, perhaps, wonder what an "indefinite consciousness" of an "utterly inscrutable" Power really is; and one may, perhaps, be inclined to be somewhat sceptical about the usefulness of a thing to which none of the categories of thought can apply; and one might, further, be pardoned for denying point-blank that a pure negation can be even as much as an "indefinite consciousness." How can Spencer, taking him on his own ground of the inscrutability of the subject matter of religion, affirm that the ultimate is ultimate, or absolute, or will always remain inscrutable? But this is a metaphysical fog-bank quite characteristic of the philosophy of the unknown. If Spencer has seen fit to reduce religion to an *n*th thing of mystery, a "ghost" sure enough, and yet attributes to it certain very definite and concrete functions, the logic is his concern, not ours. The significance of his reasoning lies in the fact that, like Comte, he felt himself compelled, even at the cost of highly prized consistency, to put more into the effect than he was willing to acknowledge in the cause.

What, according to Spencer, are the functions of religion? He begins his discussion of Ecclesiastical Institutions, which are, of course, religion expressed in so many forms, with the declaration that "There can be no true conception of a structure without a true conception of its function. To understand how an organization originated and developed, it is requisite to understand the

¹ First Principles, pp. 46, 102.

² Ibid., pp. 15, 16.

need subserved at the outset and afterwards.”¹ This is evidently too broad a generalization. It is not always true that knowledge of the remote needs of an organism will give us the clue to the fully developed product. However, after this statement one naturally expects to find in what follows an explanation of the need subserved by so universal and important a structure as the ecclesiastical. What is our surprise, therefore, to be treated once more to the familiar Spencerian religious origins, beginning with an attempted refutation of the theory that religion is innate—and here Spencer apparently forgot his assertion in the *First Principles* that the religious sentiment is a “constituent of man’s nature”—leading step by step through the development of church government up to its highest form in Europe, including by the way a demolition of the particular Hebrew and Christian religions. But what about the need for this elaborate and persisting institution? How does it function in society? Surely from the amount of space devoted to it in Spencer’s pages it is a most determinative factor in man’s existence. If Spencer’s formal answer is to be accepted as a complete and conclusive summary of what religion does for society the cosmic mountain has labored and brought forth a mouse. It is not too much to assert that the result has been absolutely trivial.

First, according to Spencer, religion is, or rather was, a social bond.² Its beliefs and rites once served to keep alive the thoughts and feelings appropriate to family relationships, by causing periodic assemblies for sacrifice, by repressing dissensions, and by producing conformity to the same injunctions. Faint survivals of this function, such as reverence for the known or supposed wishes of the dead, can still be traced among us. And all this is also true of clans, tribes and nations.

Secondly, religion is conservative. It offers “extreme re-

¹ *Principles of Sociology*, II. 671.

² *Ibid.*, III. vi. ix; 3d Ed.

sistance to change,"¹ both of usage and belief. Thus, more than all other agencies, religion conduces to cohesion, not only between the co-existing parts of a nation, but also between its present generation and its dead and gone generations. It represents the continuity of the social organism.

And these two functions of religion, as a social bond and a conservator, "may be expected to continue," though under a changed form. Why? Because the need of a social bond and conservative will continue? Not at all. But because the ultimate form of the religious consciousness is the final development of a consciousness which at the outset contained a germ of truth. What truth? "The one absolute certainty that man is ever in the presence of an Infinite and Eternal Energy from which all things proceed." In other words, the need for which religion will function in the future will not be the one for which it functioned in the past. The former was a social, the latter will be a metaphysical need. But the need for religion, no matter what its basis, will abide.

Now, in view of Spencer's well known antagonistic attitude toward religion as he understood it, and religions as he saw them prevalent around him, and bearing in mind the very limited wholesome functions, outlined above, which he was formally willing to attribute to this factor in man's developing life, it is highly interesting to reflect that in his *Principles of Sociology* he devotes not less than six hundred pages directly to the origin and influence of religious ideas and their resulting institutions, and throughout the work seems to take special delight in tracing one social development after another to a factor of progress with which he himself would have no concern and whose manifestations he regarded as so many foolish superstitions. The inconsistency is striking. So far as we know, Spencer never committed himself in so many words to Ward's preposterous conclusion that

¹Ibid., p. 103.

there is something in the very nature of things that first compels a man to be a fool before he can become wise, but the logic of his position in this instance assuredly amounts to this absurdity. The religious instinct, or whatever else one may be pleased to call it, the very fountain head of man's thoughts and actions, the accoucheur at every social new birth, has been from the beginning and through the ages only a stupendous illusion with but a single grain of truth, and that a negation! It is impossible!

But Spencer has done excellent service, though he did not seem to recognize the import of his labors, in so painstakingly tracing back one great social institution after another to its source in man's religious nature, and it is, therefore, passing strange that he did not get a firmer grasp of the functional value of this feature of our human equipment. To quote Kidd's apt characterization of this feature of his work: "As we follow Mr. Spencer through the successive stages of his theory of social development, we see how he conceives human progress to be controlled in all its features by one fact, namely, the relation of the past to the present in a struggle in which the interests in the present are becoming the ascendant factor in our social evolution."¹ Social control in all its phases, according to Spencer, either originated in or still continues to be a government by the "dead hand" from the past, and this is essentially a religious conception.

That Spencer's attitude toward religion as a social force became much more sympathetic toward the close of his long life is indicated by the character of some of his 'reflections' in the closing chapter of his autobiography. In a passage which, to my mind at least, says much more than the cold words convey on casual reading, he admits that the mass of evidence which he himself collected forced him, virtually against his will, to the belief "that the control exercised over men's conduct by theological beliefs and priestly agency, has been indispensable." "So conspic-

¹ Principles of Western Civilization, p. 86.

uous are the proofs that among unallied races in different parts of the globe, progress in civilization has gone along with development of a religious system . * * * that there seems no escape from the inference that the maintenance of social subordination has peremptorily required the aid of some such agency."¹

One cannot but regret that this conviction did not come to maturity earlier in Spencer's career. What an advocate of the wholesome social functioning of religious belief he would have made!

We come next to L. F. Ward's theory, held in solution throughout his voluminous but always interesting writings, elaborated in his *Dynamic Sociology*, and considerably modified, if not entirely negated, in an article published ten years later in *The International Journal of Ethics* for 1898. Ward, however, is such a wayward thinker that it is somewhat difficult to describe his theory with accuracy. According to Barth² he belongs to the dualistic school of biological sociology, though he himself claims that his standpoint is the "strictly monistic or genetic one."³

Feeling, the primordial element of mind, is a means to function. That is, it is a provision for the preservation and extension of life. "Nothing" says Ward, "can be genetically created that does not assist in the performance" of that function. But now, let the reader note, as structure developed, feeling was intensified and became an end in itself, for the individual; a condition of things which led to increased waywardness and violation of cosmical law. The reader is asked to recall just here that Ward has unqualifiedly affirmed that nothing can come to pass that does not tend to perpetuate life. Now he affirms, equally as unreservedly, that feeling, at first feeble, "suddenly shot up into enormous importance" and perversely pursued ends that were opposed to

¹ Autobiography, II. 545.

² *Die Philosophie der Geschichte als Sociologie*, p. 167.

³ *Dynamic Sociology*, I. 65.

the ends of nature. In fact, feeling "was unintended" in nature's plan, a wayward element, a perpetual menace to the organic experiment. The reader may be pardoned for a feeling of bewilderment. Ward himself confesses that "this aspect is wholly novel." And so it is.

Feeling, or the whole psychic and moral world in the germ, we are to conceive, then, as playing havoc with Dame Nature's plans. It must, therefore, be curbed. Consequently there came to pass another "device of nature to make the organism desire to perform acts that subserve function, but which would not otherwise be desired." That device was instinct. Feeling acts illogically from the standpoint of nature. It now turns out that instinct acts illogically from the standpoint of the individual. It is not surprising that this device, in its turn, proved inadequate, and the perceptive faculty had to be added as a further safeguard against the multiplying mistakes of the cosmic process. But, alas, this was only another mistake. Intellect only made it easier to secure the satisfaction of desire, and the imminent prospect was that the whole race of sentient beings would quickly come to nought. So, "fortunately, this very perceptive faculty which was being so freely employed in the interests of feeling regardless of function" itself came to the rescue. How? "Along with the individual mind working thus for the individual's end—there was also working, broadly, deeply, and sub-consciously, what may be properly called a collective or social mind—authoritatively inhibiting all race destroying actions." This social mind then invented—the term is not too strong, for Ward says expressly that religion "is a product of intellectual effort, and therefore artificial," as if it were something unnatural—an entirely new device for race preservation, which, for want of a better name, Ward is willing to call religion, or the belief in spiritual beings, for he accepts Tylor's definition. That is to say, man came to recognize the folly of race suicide and took means to check it before it was too late. In the beginning, as we have seen, intelligence was

riotous and dangerous. In the end it invented religion to tame itself. But one of the unwritten paragraphs of Ward's view of the origin of religion is concerned with the how of this interesting process. He gives us, indeed, a passing glimpse of it when he tells us, seemingly in all seriousness, that "in the nature of things a rational being must * * * be led into the most vital errors, for which he must further be deceived into cherishing the most intense regard," before he can reach the truth.

Ward himself seems to have misgivings about this all too easy and certainly sketchy theory. A little further along in his article on *The Essential Nature of Religion* he is led to search for and actually finds still another "foundation upon which all religion is built," namely, man's "sense of helplessness before the majesty of the environment." The race was in danger from unknown and uncontrollable agencies, and the perceptive faculty perceived this and sought to explain those agencies. In this instance, evidently, religion is traced back to the activity of the perceptive faculty, in the other it is carried back to the emotions, to a "sense," a feeling of helplessness, or dependence.

However, let us overlook this contradiction, and enquire of Ward what religion, on either supposition as to its origin, does for mankind. Here also we are met with two mutually inhibitive answers. In the *Dynamic Sociology*, his *chef d'oeuvre*, Ward insists that religion's "essentially erroneous character" makes beneficial results antecedently doubtful. As a wholesome social factor it is in all respects a failure. In a word, it is an anti-progressive and harmful influence which has "demonstrably impeded his [man's] upward course throughout his entire career."¹ In the magazine article referred to, in which Ward defends the thesis that religion "is a substitute in the rational world for instinct in the sub-rational," he demonstrates that it restrains unsafe activity, curbs the individualistic will, and stands for function

¹ *Dynamic Sociology*, II. 287.

against feeling. Ward's thought, it will be seen, has had a wholesome development. His earlier distinctly antagonistic views of religion have given way to a more appreciative theory and one much more consonant with the facts.

Again. Feeling is essentially an unsafe thing in the economy of nature and must be checked. Nevertheless, strange as it may seem, "all forms of progress are so many victories of feeling over function." Progress, which is necessarily a good effect, comes, then, from a bad cause. Further, as a restraint, a conservative force, "it is in the nature of religion to resist" the feelings, that is, to resist progress. If religion had its way, the race would be static. Let the reader reconcile this, if he can, with the further statement that "it belongs to the true nature of religion constantly to yield to the demands of reason and feeling." Ward attempts to resolve the difficulty by explaining that religion's opposition to feeling is not based on any hostility to pleasure per se, for pleasure is not bad, "but to the acts it produces." "Selfish greed is execrable, but the fruits of honest toil are noble." It would seem that Ward will not allow religion to discriminate between the pleasures of greed and the pleasures of honest toil. If that be so it results that religion does not function at all as a restraint of feeling, but as a kind of touchstone of its good and evil effects. How it does it is left to our imagination.

Ward's fundamental proposition is that religion is a substitute in the rational world for instinct in the sub-rational. That is to say, it functions for man as instinct functions for the sub-human species. Now, according to Ward himself, in his own words, "instincts were developed under the law of advantage or the survival of the fittest"—which means, if it means anything at all, that survival, on broad lines of species, of course, implied variation, variation in the direction of progress. Ward sees, therefore, that "instinct is positive and constructive." Query: why then does he insist upon limiting the religious instinct to negation and restriction? Instincts are positive and construc-

tive, but the religious instinct, he insists, has in "no direction advanced the temporal interests of mankind." In what sense then, can it be regarded as a substitute in man for instinct in the brutes? Only in the very limited sense that it inhibits men from doing certain things. Ward evidently had glimpses of the truth here, but for some occult reason refused to follow it into the clear light.

Kidd's view, exhaustively presented in his *Social Evolution*, is in some respects closely akin to Ward's. He professes to abandon but practically follows that writer's emphasis and dependence upon the biological method, with its forced and unnatural particularizations, as well as generalizations, and claims to content himself with seeing "some analogy between social life and organic life in general," but still thinks that "social systems seem to be endowed with a definite principle of life." What is that principle? In other words, what is it that mediates between the individual and the social order? Is it reason? No, because the conditions of existence, says Kidd, can have no rational sanction for most of the individuals comprising society. Then what is it? It is something above reason, religion. And it is here that Kidd's view coincides with Ward's later position, for Kidd's fundamental proposition is that religion functions solely as an "ultra-rational sanction for social conduct in the individual." From the standpoint of the individual, he claims, religion is as much an irrational thing as the blind evolutionary processes would have been, if they could have thought about it, to the large proportion of every species which had to be sacrificed for the good of the comparatively few who became fit to survive. Socialization, functioned by religion, is, then, a tremendous paradox, the sane effect of an insane cause. Man, Kidd seems to hold, having once acquired reason, insisted on using it to outwit the cosmic process of which he is a part, and has managed to go forward while stubbornly trying to go backward only by having his reason coerced or hoodwinked by religion. Kidd will not allow that

intelligence has had anything to do with race development. The question naturally arises, what is it good for? On his premises even the intellectual construction of the religious ideal is an impossibility. He does not, therefore, attempt to explain the inevitable rise of religious doctrines, the rational formulation of religious sentiment. That the race has made any progress at all under such conditions is truly remarkable. Is it, from the standpoint of the evolutionist, possible for the cosmic process to generate a principle, so potent and universal as human reason, which is so essentially hostile to the high trend of that process that it could conceivably, according to Kidd, nullify the aims of that process? Can the cosmic process commit suicide? Ward would probably say, No. Kidd says, Yes! Is it, psychologically speaking, possible to have an irrational sanction for rational conduct? Are men religious against their better judgment? Do they believe in God because it is a reasonable or an unreasonable thing to do? As a matter of fact, do not men believe in God, in any kind of a god, because to do so is more rational than not to do so? Is not intelligence, reason, always a concomitant of religion, it matters not how meagre it is? Religion, Kidd insists over and over again, is irrational, but he admits, as he must, that it works in many rational ways and accomplishes many rational things. Would it not have been more logical to conclude that religion is not the contradiction but the fulfillment of reason?¹

The fallacy of Kidd's reasoning lies in his twofold assumption that man individually is preponderatingly anti-social, and that the subordination of individual interests is an onerous condition. It is to be regretted that students of sociological phenomena persist

¹ Kidd's formal statement of his position does not employ the phrase "irrational," but always "ultra-rational sanction." But as he develops and illustrates his thesis it plainly appears that "irrational" far more accurately expresses his thought.

in setting up two opposing tendencies like individualism and socialism only to plunge them into an endless cut-throat competition and conflict, a condition of things which does not even exist in animal association. An individual with no interests in common with those of the society in which he lives is an abstraction unknown to experience. A society whose interests are antagonistic to those of its members is an impossibility. As a matter of fact, men's interests, duties and desires are bound together. Individualism and socialism are merely complementary aspects of the same thing. It is the worst possible social fallacy to argue, as Kidd does, that "the interests of the individual and those of the social organism to which he belongs are not identical," and are not "capable of being reconciled." He might as well argue that the interests of the individual members of the family group are antagonistic. The true view is that the group's interests are the interests of its individual members. It is passing strange that Kidd should so persistently overlook this, for he himself admits, as indeed, he must, that man's reason only produces its highest results when he acts in cooperation with his fellows. Precisely; but this cooperation is not only conducive to the future success of society but conditions its welfare at any given moment in the present. It is an answer to Kidd's position, though he will not have it so, to say that a given state of society is a natural product of the time and necessary for its progress. Many individuals, in all stages of society, have suspended what Kidd terms the onerous conditions of progress by which they found themselves surrounded, but they did so to their hurt and extinction. But that larger reason which we call the social mind has always tenaciously insisted—though not uniformly—upon imposing those conditions upon itself because it recognized in them the very *sine qua non* of healthy life and progress. But what is the social mind but the combination and unification of many individual minds, the residual store of human experience?

Neither will Kidd's definition of a rational sanction bear careful examination. For him that phrase evidently means any given individual's intelligence. But, surely, no greater mistake can be made than to seek for a rational sanction for progress in the opinion of one, a few, or even of many individuals who for one cause or another are antagonistic to what might be called the dispositional tendency of society to progress, and who, in consequence, are deteriorating, belong to that portion of the species which will suffer eventual extinction. Certainly, the conditions of civilized progress have no rational sanction for the Red Indian. Nor do a police force and a jail commend themselves to a criminal, nor "thou shalt not commit adultery" to a libertine. Certainly, the interests of a Red Indian and those of American industrialism are not identical to him. Nor are the criminal's interests, as he conceives them, those of organized society. But does that argue that civilization, organized society, has no rational sanction? To mean anything, this phrase as used by Kidd must refer to a sanction which is more than such an incidental by-product of reason as individual opinion; it must refer to the social mind, that mental unity which results from many minds in interaction. Would Kidd maintain that the social mind, public opinion, if one will have it so, does not sanction the type of civilization prevailing in these United States?

It is utterly unscientific and unsatisfactory to trace what Kidd so frequently refers to as "that great fund of altruistic feeling," which has been the dynamic of Western civilization, to a sanction of which nothing more definite can be predicated than that it is something "ultra-rational," something which, so far as it concerns the individuals upon whom it operates, imposes its restraints arbitrarily, inevitably, and incompatibly with the welfare of a large proportion of the units who compose a society for which "progress is a necessity from which there is simply no escape." Assuredly, the harmonization of religion and reason is not so hopeless a problem as Kidd seems to believe.

But enough in the way of criticism. Having pointed out what we consider the serious flaws in Kidd's argument, we must now hasten to express our satisfaction because of what we judge to be his great advance in the right direction—his criticism of the onesided intellectualism of Spencer and his followers, and the really able manner in which he emphasizes the importance of the religious sanctions in the development of Western civilization. His argument, as far as it goes, for the part played by Christianity ever since its introduction into the world cannot but be regarded as conclusive. Anthropology and history, he shows, unite in supporting his threefold contention that man's intellectual progress has been much more insignificant than has been generally assumed; that the difference between the lowest nature peoples and the highest culture peoples is mainly an ethical one; and that there is no discoverable direct connection between intellectual development and high socialization apart from religion. The all-pervasive motive force behind the development of Western civilization "has its seat," he rightly claims, "in that fund of altruistic feeling with which it became endowed when Christianity became a part of it." After this seemingly unequivocal declaration it is all the more to be regretted that so eloquent a pleader for religion should really have stopped short of doing full justice to his subject, for, after all, it must be confessed that he has failed to define the full place and potency of religion in social progress.

Let us now glance for a moment at M. Gabriel Tarde's conception of the function of religion in the light of his theory of imitation as the method or process of social organization or progress.

To begin with, we must question the adequacy of this theory as a psychological interpretation of social phenomena. The fundamental objection to imitation as a sociological explanation is that it is a process merely and not a causal principle at all. And then to disregard entirely the important and controlling part which innate or constitutional bias, or instinct, might even a priori,

without the hint which biology gives us, be supposed to play in the process, and to substitute therefor a purely objective and mechanical scheme, seems to be little short of intellectual obliquity, due in this instance to an over-much affection for a theory, the pet child of M. Tarde's brain. The extent to which he is carried by his bias is evidenced in his refusal to grant that men ever imitate each other simply because they wish to do so. Men only imitate each other's acts because they first imitate each other's needs. The very will to imitate is itself imitation.

According to M. Tarde "l'imitation joue dans les sociétés un rôle analogue à celui de l'hérédité dans les organismes."¹ It is, therefore, controlled by laws, logical laws, our author prefers to call them, though he admits that he might just as well have said teleological, seemingly without any suspicion that such an apparently simple admission really shatters his theory from top to bottom. But as his argument proceeds it develops that what he calls the logical laws really play a very subordinate role in the social process: "Mais il est très rare que l'action logique s'exerce de la sorte dans toute sa pureté."² Certain "extra-logical influences" have a way of interfering, and the poorest innovations are often imitated instead of the best. This being so, it need not surprise us to find M. Tarde devoting fifty-two pages of his book to the logical laws and one hundred and eighty-nine pages to the extra logical influences. It is somewhat difficult to say just what he means by the latter, but if, as he affirms, "Les causes logiques agissent quand l'innovation choisie par un homme l'est parce qu'elle est jugée par lui plus utile ou plus vraie que les autres,"³ it would seem that extra or non-logical influences operate according to a reverse rule. But this is nowhere so stated. However, the extra-logical influences seriously

¹ *Les Lois de l'imitation*, Troisième éd., p. 12.

² *Ibid.*, p. 153.

³ *Ibid.*, p. 153.

interfere with the operations of the so-called laws. Among the phenomena which M. Tarde discusses under extra-logical influences we find language, government, morality, art, and religion, in fact, pretty nearly all of life. Speaking of the last named he refers to its omnipotence and omnipresence in all the functions of society. "Si, au début des sociétés, tout, dans les moindres pensées, dans les moindres actes de l'homme, depuis son berceau jusqu'à sa tombe, est rituel et superstitieux, les sociétés adultes et achevées donnent le même spectacle."¹ As a matter of fact, "sans un établissement religieux assis et reposé après ses conquêtes, une civilisation forte et originale est impossible."² Hence, "Il n'est donc pas vrai que le progrès de la civilisation ait pour effet de reléguer la religion dans un coin des âmes."³

These brief quotations will suffice to illustrate M. Tarde's high esteem of the purpose subserved by religion in society, even though his view of its rise and development must be regarded as altogether inadequate.

M. Guyau's bulky volume on *The Non-Religion of the Future* deserves some notice as a reflection of a modern Frenchman's intellectual environment.

Religion, M. Guyau declares, is "an invincible tendency in man to try to understand what passes before his eyes." "It is simply a mythical and sociomorphic theory of the universe." "It is nascent science." Belief in a Providence is its most vital element. In these definitions, it is evident, religion is put upon a purely intellectual basis. The cause of religion is a desire to explain the universe. The explanation is religion. Hence religion is knowledge, or a substitute for it. According to this way of looking at it, the Ptolemaic system and the Evolutionary Hypothesis are religious.

¹ *Ibid.*, p. 307.

² *Ibid.*, p. 305.

³ *Ibid.*, p. 306.

But M. Guyau affirms further, man being essentially a social animal, he could not be resigned in the presence of the success of antisocial conduct, and when it seemed that such conduct had succeeded humanly, the very nature of mankind tended to make it turn toward the superhuman to demand a reparation and a compensation. Here the basis assumed for religion seems to be as clearly an emotional one, dependence or fear. Indeed this is plainly avowed. "It was physical fear, timor, and not moral reverence, which gave being to the first gods."

Let us hear M. Guyau again. "Of all things it is most repugnant to him [man] to believe that the universe is fundamentally indifferent to the distinction between good and evil;" and "he has this conviction by virtue of the moral nature with which heredity has furnished him." This time, it will be perceived, religion is made to spring from an ethical germ somehow native to human nature. Sometimes, when it suits his immediate purpose, M. Guyau would have us conceive of religion as of intellectual origin; sometimes, for some other purpose, he would have us rely on the moral sentiments as its spring; and sometimes bald physical fear explains it.

But M. Guyau oftenest insists that, at first, religion and morality had nothing in common, yes, that religion frequently contained a visible germ of immorality within itself, that it was often morally retrograde, and is not now a *sine qua non* of life and superiority in the struggle for existence. Our author's inconsistency would seem to be hopeless. At one moment religion is antisocial, at another it serves as "reparation and compensation" for antisocial conduct. The explanation of the confusion is, however, perfectly simple. M. Guyau, having failed at the very outset correctly to analyze out the essential elements of religion, has never learned to make so elementary a distinction as that between religion and religions, between the essence and the phenomena of what he discusses.

Hence his superficial conviction that the days of religion are numbered. In passing that verdict he is evidently thinking of religious manifestations, of the transient expressions of religion. A glance at the future as he conceives it will make this plain.

Is it possible that mankind will be able to get along not only without religion but without any substitute for it? By no means, says M. Guyau, and straightway grows eloquent in describing the glories of that religionless age by supplying it with—religion! We shall still, he affirms, “have wings to support us in our flight through life, wings to support us in our flight past death.” The religion which supported us as individuals and as a society in the past with its hopes of immortality—for this function is willingly ascribed to the religion of the past by M. Guyau,—foreshadowed a time when, as a last stage in the struggle for existence, religion will be superseded both in its subjective and objective aspects by associations for intellectual, ethical, and aesthetic purposes, and metaphysical hypotheses will replace distinctly religious dogmas, and the “individual consciousness shall have achieved a higher degree of complexity and of subjective unity, and along with these a power of more intimate communion than they possess to-day.” This will develop, finally, into a complete fusion of all consciousnesses. And it is conceivable, thinks M. Guyau, that such a fusion of a sufficient number of consciousnesses may develop a kind of intercosmic consciousness and a universal spiritual society, which will be able to offer greater and greater resistance to the individual’s death, indefinitely prolonging life. And even when death finally closes the eyes of the body, the dying one will have entered “into possession of an immortality in the hearts of those who love him.” Finally, the “phenomenon of mental palingenesis, which is at present isolated, may gradually come to be extended to the whole human species.” Immortality may be an ultimate possession acquired by the species as a whole for the benefit of its members. At bottom this seems to be a kind of adaptation of

the indestructibility of force to the immortality of the soul. As force in general outlasts particular forces, so individuals die but the race lives on. The matter of fact reader may be pardoned for stubbornly continuing to believe that if individual immortality is an illusion that of the race is an absurdity.

If there are any who fail to find "consolation and encouragement" in this sort of thing, M. Guyau knows nothing better to say "than the simple and somewhat unfeeling words of the ancient Stoics, Be not a coward." Cheap and easy!

It is scarcely needful now to call attention to the fact that, like his more distinguished predecessors as officiants at the obsequies of religion, M. Guyau, after laboring through some five hundred pages to demonstrate that future man is bound to be nonreligious, finds himself compelled to offer him, after all, the consolations of that which he would take away from him, even though it be in an exceedingly diluted form. The eternal craving will not down.

The views of the German sociologist Lilienfeld¹ concerning the end subserved by religion in society are interesting for us chiefly because they bring into bold relief the apparent impossibility of dispensing with religion on any theory, no matter how purely biological the terms may be in which it is formulated. Indeed, it is Lilienfeld's avowed purpose to show that philosophy and science, especially the biological and social sciences, find their completion in religion, particularly in the Christian religion, the highest possible social force. Unlike Comte, Spencer, Ward, and others, Lilienfeld's theory does not stop with mere negations, but attempts to find the securest possible positive foundation for religion.

Like Spencer's earlier conception, Lilienfeld's idea of society is that of a real organism. Just as any natural organism con-

¹ Gedanken über die Socialwissenschaft der Zukunft, Fünfter Theil, Die Religion.

sists of cells, tissues and organs, so is it with society. And the author leaves little to be desired in the minuteness and definiteness with which he describes and illustrates the social organism's progress in terms of physical development. The individual is a microcosm accurately reflecting the social macrocosm, and just as individuals gradually come to a sense of duty to themselves by means of a series of checks and stimuli, so society comes to a sense of relationship to God. Religion, therefore, is of social origin. Its basis is an emotional one, desire. Men always desire one thing more than another. Whatever they desire most is, for the time being, their god. Hence the evolution of religion. The highly developed type of religious individual to-day satisfies his supreme desire by a psycho-physical union with the highest ideal-real social potentiality known to history; the kingdom of God. Religion, therefore, in the last analysis, functions as the satisfaction of an imminent human need which has its root in an organic relationship between God and humanity.

From this review of opinions of the function of religion from a purely sociologic standpoint, it appears that sociologists are in accord as to the restraining and conservative influence of belief upon social activities. Indeed, some, like Spencer and Ward, are inclined to so over-emphasize this aspect of its function that it becomes, in their hands, really inhibitive of progress. But our review has also shown that, thus far in the development of thought in this direction, writers have shown no disposition to claim more than this negative social usefulness for religion. Here and there, indeed, as Ward in the magazine article referred to above, and Kidd, we find a writer seemingly on the point of taking the next and almost necessary step, only, however, to halt in indecision. None seems willing to admit the use of religion in opening the avenues and directing the expressions of the progress of the race. They are reluctant to grant that it is capable of constructive results. LeBon, for example, reiterates that "The part played in the life of nations by universal beliefs

is so fundamental that its importance can hardly be exaggerated. History does not furnish an example of a civilisation establishing and maintaining itself without having at its base the common beliefs of all the individuals of a nation, or at the very least of a city.”¹ And Baldwin sums up his brief discussion of “ethical and religious sanctions” with these words: “Religious faith and with it religious institutions are, therefore, indispensable to humanity, because they represent normal and essential mental movements. They are necessary at once to ethical competence and to ethical progress. Yet it still remains true, * * * that in social progress they exert their influence indirectly, through the ethical sanction which is personal to the individual.”² Assuredly this is a wholly inconsequential conclusion. What, religion, this great mass of beliefs, this tremendous fabric of institutions, this indispensable human equipment, with which man has been busy from the first dawn of his intelligence until now, only exerts its influence indirectly, through still other channels? This cannot be the final word of explanation.

¹The Psychology of Socialism, p. 64.

²Social and Ethical Interpretations, p. 443.

PART II

THE SOCIAL FUNCTION OF RELIGION

CHAPTER IV

RELIGION AS A CONSERVATIVE FORCE

It is high time to formulate that working definition of religion referred to in the beginning of Chapter II and to outline a theory of the social function of religion.

For the purposes of this thesis, then, religion may be defined as *that reverential attitude which man assumes toward the Power which, he believes, manifests itself to him in the universe.*

This definition, brief as it is, recognizes, and assigns its appropriate function to, the emotional, intellectual, and volitional elements of religion.

This attitude is rooted in man's emotional nature, and on the side of content, may be merely an undefined feeling toward the universal, as in the fetish worshipper, or the definite conception of developed monotheism. It must be conceived of as the result of an original bewildering complex of feelings which became differentiated more and more into such more or less definite emotions as dependence, unworthiness, fear, hope and wonder. On the evolutionary hypothesis the intellect must also be considered always to have been one of the constituent elements of religion. And, as a matter of fact, as far back as we can trace it, all the subjective and objective phenomena of religion cluster around the intellectual factor of belief, meaning by this term a practical belief in a being or beings more or less definitely conceived and which can be comprehensively described as god or gods. The factor of volition, the conscious assumption of an attitude toward

the god or gods believed in, must likewise, of course, have a place in any definition. Sociologically considered, the word God includes the spiritual beings dreaded by the savage, the highly specialized God of orthodox Christianity, and the Unknown and Unknowable of Spencer, or any other predicate any one may prefer to bestow upon it. It is certain that a belief of some sort is essential to any kind of religion. It is psychologically impossible for man to be religious prior to his consciousness of a personality other than himself, before the intellectual cognition of some kind of a God.

But now, having reduced religion to a definition, it may be well to caution the reader that the thing itself, religion as a human experience, even in its lowest stages, is always something more than this cold concatenation of fossil words can imply. Definition is description. It, therefore, ignores worth, or value. It never quite tells the whole truth. Words cannot reproduce a painting, much less the beauty of an actual sunset. No definition quoted in these pages is precisely what a religious man means by religion as he knows and lives it. Religious experience, even in its poorest forms, is fuller, richer, more potent, than scientific analysis can disclose. Its fundamental elements may be distinguished, perhaps, but its finer gradations, its almost infinite combinations, escape all analysis. There is, for example, a great deal more in religion than, as Spencer would have us believe, a more or less orderly stratification of "ecclesiastical institutions" through human society. Religion has not been only a mere linking together down the ages, more or less logically, of institutions whose origin and development can be traced to this or that place or time and social exigency. Spencer's treatment of religion is like that of the philologists who, by the aid of such external elements as particles and extinct digammas analyze a production like the *Iliad* and upon a purely linguistic basis pronounce upon its value as an epic poem. But the *Iliad* is not a mechanical thing of so many verses and words only. These are of altogether secondary

importance. The real value of the poem, that in it which appeals to the human mind and heart and makes it live age after age, lies in its masterful portraiture of men and gods, in its linked human and divine, which charms, fascinates, and inspires. The feelings and desires of the Iliad's men and women make up life's content still for the majority of mankind. So, likewise, religion is not only institutions. It is a life, a universal life.

Religion thus defined we take to be the functional correlate in man of instinct in the lower animals, or, as Ward has it, the substitute in the rational world for instinct in the sub-rational. This, it should be noticed, is not to assert that religion is biologically a true instinct, though we could, perhaps, have safely taken that additional step with Marshall,¹ even though he considerably broadens the conception of instinct by including in it widely varying activities, instead of confining it, as is ordinarily done, to hereditary and relatively definite ones. But that would have led us too far afield for our present purpose, requiring us, among other things, to demonstrate not only the organic nature of religious expressions but their relative definiteness and invariable coordination. For our immediate purpose it is, happily, needful only to regard religion as a general trend of action due to long race experience, or persistently prevalent by imitation, or even as handed down by tradition. Hence the statement that it is the correlate, or substitute, in man of instinct in the brutes. And while it may be admitted that the analogy, for that is all it is, does not contribute anything to the scientific development of the subject, it is, it must likewise be admitted, a striking and instructive one.

A word of caution may not be out of place here for the unscientific reader. In thus defining religion and its function we remain, of course, wholly in the field of natural religion, and need not trench, in our discussion, upon the dogmatic and ecclesiastical.

¹ Instinct and Reason, ix.

tical forms of the positive or 'revealed' religions, except, indeed, as they may include elements in common with the former, such as a belief in God, a future life, and personal reward and punishment. The recognition of religious forces in society has nothing to do, primarily, with the question of theological dogmas or the comparative value of different creeds. The sociologist is quite content to leave all such questions in the hands of the theologians.

Now, in the struggle for existence, in which the law of the survival of the fittest dominates, instincts must be regarded not only as passive conservators of what has survived, but in addition, as positive and constructive, functioning to fit for survival.

The struggle for existence, amid variant conditions, inorganic and organic, external to the organisms involved, constantly demands new adaptations on the part of the organisms themselves, either in structure or constitution, in order to survive. In proportion as the adaptation is good or bad on the part of an individual or generation of individuals will the variation of the succeeding generation be better or worse, from the developmental standpoint. If it be better, only infinitesimally so, it will be by that much more able to survive. If it be worse, almost impalpably so, it will be that much more liable to perish. The slightest difference may turn the nicely balanced scale either for preservation or extermination. That is to say, in order to function for survival, instincts must be more than static, they must be sensitively adaptable. Merely static instincts amid shifting conditions of existence would result in degeneration and eventual extirpation. To function for survival, which is, in effect, to say, to make for progress, instincts must be adaptable, must be able to conform successfully to any new demands of the environment, must be spontaneously convertible into needful relations to the new conditions of existence. Darwin assures us that "It may metaphorically be said that natural selection is daily and hourly

scrutinising, throughout the world, the slightest variations; rejecting those that are bad, preserving and adding up all that are good; silently and insensibly working, *whenever and wherever opportunity offers*, at the improvement of each organic being in relation to its organic and inorganic conditions of life."¹ But this is only another way of saying that instincts are positive and constructive functions. A relatively successfully adapted instinct becomes at once a still better adaptation in a future organism.

Now, upon the assumed unity of the psychological and biological individual we can, of course, apply this doctrine to man's religious endowment as well, when it at once appears that he is supplied with this endowment relative to his life-process, for its guidance and control, and that there can, therefore, be no kind of religion that does not in some way subserve that process. I say no kind of religion, which does not mean that every differentiation of it must necessarily be immediately ancillary to life as we understand it. If some particular manifestation of religion does not seem to be directly promotive of life in the best sense, it would not imply conflict with this law, since it cannot be maintained that we indubitably know what is and what is not useful in the long and vast sweep of man's upward progress. And even though it could be demonstrated that some forms of religion are hurtful, the general adaptability of religion to human welfare would not thereby be impaired. That some races and peoples have remained static, have even perished, despite a tremendous development of the religious spirit does not, as will be shown more fully later on, militate against the argument. Religion is not the only condition of human progress. The physical environment is also a factor. Intelligence must make its contributions. But, other things being equal, the religious people will be the people most apt to succeed in the struggle for existence.

¹ *Origin of Species*, p. 60.

Hence, the important place of religion for man as the correlate of instincts in the brutes. The continuance and development of human life, in the fullest meaning of that term, also depends upon the degree of adaptation to the conditions of existence in which it is found. Harmony between it and its environment must be constantly maintained. But here, of course, vastly more than in animal association, the social milieu comes into play. The individual human being is much more dependent upon the society in which he moves for his progressive differentiation and survival. Among animals the physical environment is the important factor, with men it is their mental and moral association with each other. But in this high and complex domain of life there is always a strong tendency to destroy it. Feelings, intelligence, will, highly specialized, are forever prompting the performance of acts that satisfy immediate individual want but which do not, in fact, make for race survival. These acts in man correspond to those individual variations in animals which, be they never so slight, throw them out of harmony with their life conditions and tend to their extinction. The immoral, the criminal, are so many variants who are out of harmony with their environment and therefore on the road to extinction. Physical laws and forces on the one hand, social laws and forces on the other operate to their destruction. One of the functions of religion is to curb such variation by limiting the sphere in which desire and impulse may be gratified. Any form of degeneracy, therefore, except, in some instances, purely physical, is just so much evidence that the restraints of religion have lost their grip. Another of its functions, as we shall see presently, is to replace the individual sanctions with inclination and desire for social cooperation and ethical conduct.

Religion is not only formal, it is constitutive also. It is a power of restraint to prevent variations that would destroy the race, but in so doing it also, necessarily, fosters those actions and promotes those variations that tend to perpetuate and

improve it. The very restraint imposed by it upon the use and abuse of the individualistic forces, that is, for personal and egoistic ends, creates a necessity for the discharge of those forces in other directions, toward the social, the ideal, the Deity. Religion, therefore, is both an effect and a cause. As an effect it is the result of past construction. As a cause it is continually laying the basis for new and better adaptations and the higher organization of society. A successful variation of the standard of life is a new standard in the making.

This position is considerably strengthened when viewed from the standpoint of those biologists and psychologists who, in addition to the intellectual element in instinct, also recognize the will as a more or less active factor in it. Thus Cope sees clear evidence of will "in the determinate movements of many of the Protozoa in the seizing of food."¹ Sully declares that there is in instinctive impulse "a distinctly active element which forms the analogue, and in a sense the true genetical antecedent, of the conscious pursuit of an end."² That is to say, even the earliest indications of life reveal a choice of stimuli. In the lowest organisms this manifests itself in impulse, tendency. In the higher stages it becomes craving. In the human consciousness it is desire, desire for a definite expression of life. But, upon the evolutionary hypothesis, the choice must be directed toward that in the environment which stands in friendly relation to the organism in order to its survival. Those organisms that have survived did so choose.³ It is plain, if this voluntaristic psychology holds good, that the universal prevalence of the religious element in man's life can only result from his instinctive choice of it as tending to his

¹Origin of the Fittest, p. 208.

²The Human Mind, II. 192.

³J. T. Gulick, in *Evolution, Racial and Habitudinal*, demonstrates "the preponderance of self-initiated habit over environment" in snails on the island of Oahu. Quoted by Buckham in *Christ and the Eternal Order*.

preservation, fitting him for survival. Men are religious because religion is essential to race maintenance and progress.

Religion, then, functions for survival, first of all as a conservator. It does this in the guise of a social bond and as a restraint upon antisocial variations. Except in its biological dress this is no new thought. Plutarch expressed it long ago. Religion, he asserts, "contains and holds together all human society, and is its main prop and stay." And this is true of its lower as well of its higher manifestations, indeed, is perhaps truer of the former than of the latter.

Before passing to an examination of some of the many concrete instances in savage and civilized life that may be adduced to fortify this position, a word or two about the question of function will not be inept.

Some elements of consciousness function indirectly, others directly. To the former belong the emotional elements in general, whose functioning is always more or less mediate. To the latter belong the reflective elements, more thoroughly differentiated, and, therefore, always more directly related to man's various activities. There is, of course, no question that the religious attitude belongs, in the main, to the first-named class. For, though an individual here and there, and even a group of individuals for a period, consciously and directly modify and control their "daily walk and conversation" in order to "glorify God and enjoy Him forever," for the vast mass of mankind such a definite sense of values does not always exist in consciousness. That is to say, for most men religion influences the general character of their activities, rather than their specific acts. The normal individual's whole tone of life is religious. And this is true also of social systems, savage and civilized. Among the Australians the religious consciousness is absolutely identical with the social consciousness. All their actions and relations, individual and social, have a religious content. Among them control has not been differentiated — religion functions for all pur-

poses directly. In higher societies, though separate in thought and fact from other social activities, administrative, legislative, judicial, religion lends its powerful sanctions for the attainment of the several values aimed at by its general control of human dispositions.

For confirmation of all this we may now appeal to the conditions among primitive peoples as we know them to-day. It is true that this method, too heedlessly pursued, led Spencer very much astray. It must be kept in mind that differences of environment would bring about differences of thought and habit between the modern savage and primitive man. But there are weighty reasons for assuming a general parallelism between conditions among primitive groups of men and savage societies to-day.

Among the Araucanians, for example, a people without any government whatever, among whom the idea of authority is so little developed that the father does not even venture to control his household, and who have so little cohesion that they do not live together in villages, but as isolated groups, each of which is absolutely free, the force that binds them together, fuses them into a people, is a religious one in the form of a species of ancestry worship. They believe that their forefathers now people the Milky Way and from that high eminence watch their earthly children. Among those wild sons of the southern steppes physical kinship must be strengthened by invisible bonds, by a mystical relationship, in order to weld them together into a real brotherhood by a common awe, fear and reverence. Such community of interests, sentiments and thoughts as they have is based upon community of religious belief. All of which means that the real social bond among this people is not the mechanical one of blood-relationship only, nor any merely mesological one, but is essentially psychological in its nature, and distinctly religious.¹

¹ Keane, *Man: Past and Present*, p. 427.

Nor can there be any doubt that a conviction of such mystical or spiritual relationship was basal in all primitive association, and must have been a powerful factor in the modification of conduct. Such a belief it must have been which led men inevitably away from a purely isolated existence with its egocentric thought and action, if such human beings ever existed, to the conviction that others are on an equal footing with themselves, have identical rights and interests, and must not be looked on longer as more or less willing tools for the attainment of selfish ends. Such a conviction, such a vague apprehension, if you please, could not but modify, by intensifying, by solemnizing, in any group of primitive folk such natural rights as must have existed among them from the very beginning, and have gradually merged them into a principle of union which interpreted those rights and duties in new and fairer senses. Mutual aid, hitherto conditioned almost entirely by the food supply, or by the needs of attack and defence, was now broadened to cover many other relations and interests. Sympathy, hitherto in the germ, a bald consciousness of kind, was born, bringing in its train true social relations, or ties no longer merely objectively conditioned, but which can be explained in terms essentially psychic. Society began to exist in idea.

Among the Australian aborigines, by common consent the best example of arrested development left on earth, religion is the social bond and control par excellence. The natives are literally enmeshed in religion. Their life from day to day, including their most trivial and ordinary actions, as well as their most important functions, is directly and solemnly controlled by their religious feelings and ideas. The only socializing force in operation among them is the religious one.

Examine, for example, the social organization of their tribes. The highly intricate system of blood-relationship and the complicated marriage laws and customs in vogue among them are

based wholly upon totemism, which must now be recognized as an essentially religious social system.¹

Perhaps a word on this point will not be out of place before we pass on to illustrate it. It is true that no satisfactory explanation of the origin of totemism has yet been offered. Spencer's, that it is the result of verbal confusion on the part of primitive man, who first named himself after plants and animals, and then got these things mixed up with ancestors who had also borne such names, though typical of much shrewd guessing by investigators of this point, does not seem to have the least fragment of evidence to rest upon.² From what we now know of the habits of the savage mind totemism seems most likely to have had its roots in early man's conceptions of his relations to external nature. He believed himself to be actually descended from plants and animals. Australian aborigines still believe childbirth to be due directly to the totem, the women sometimes taking all manner of precautions to prevent its slipping into them. In other words, "Totemism is simply a primitive conception of family pedigree."³ It can readily be seen how, from such a conception, a socio-political scheme for the government of sex and other relations, could develop; and it is equally evident that such a conception, looking ever to the past and beyond the individual for authority and inspiration is essentially a religious one. But it would take us entirely too far afield to argue this question in detail.⁴

¹ For the facts about the Australians we are indebted to Spencer and Gillen's *The Native Tribes of Central Australia*. For the deductions drawn from the facts they are not responsible.

² *Principles of Sociology*, I. 337.

³ *The Annals of the American Academy of Political and Social Science*, May, 1904, p. 116.

⁴ The interested reader is referred for further light to Frazer's *Totemism*, Lang's *Social Origins and The Secret of the Totem*, W. R. Smith's *Kinship and Marriage*, the article in the *Annals* referred to above, and, especially, to the minute descriptions of totemic ceremonies in Spencer and Gillen's *The Native Tribes of Central Australia*.

Briefly summed up, the religious elements in totemism are: descent from or kinship with the totem; abstention from marriage within the totemic name; inhibition of sexual relationships within certain limits; the obligation of blood upon the slain man's totem kin; abstention (normally) from killing, eating, or using the totem; and belief that punishment follows upon the violation of any of these injunctions. Whether or no it is permissible to speak of "totem gods," the religious spirit of the system is beyond all doubt. Lang is in error when he asserts that it "proves nothing in the nature of a religious attitude towards" the totems "That magic is worked for their preservation and propagation."¹ Exclude the "magic" that is worked among them and you summarily do away with the only semblance of religion among many savages the world around. This "magic," which is always based upon certain more or less clearly defined conceptions of the universe and man's relations to it, is the savage religion.

If, now, we take the Urabunna tribe as a representative group of Australians, we find its members divided into a series of totemic groups, based upon a tradition that the members of the several groups are the descendants of certain ancestors who, in the Alcheringa, or most distant past conceivable to the native mind, were the progeny of the animals or plants or other objects associated with the totemic name. Now, these totemic groupings determine the marital rights, privileges and duties, of every individual member of the tribe, even to the minutest detail, and of course, quite completely determine the terms, or, rather, the degrees of relationships that may exist between them. And, let it be carefully noted, although nearly every degree of sexual relationship from promiscuity to monogamy is in existence among them at some time or another, the times and occasions even of the promiscuity are prescribed, and therefore governed and limited, by religious ceremonial, and the precise degrees of ordinary sexual relationship are always strict-

¹ Social Origins, Introduction, p. xi.

ly defined and maintained with the utmost rigor, and that solely with the aid of the religious sanctions. Among these savages, as among culture peoples, the average is sometimes invaded by the exceptional, the tribal custom and law is sometimes individually denied. But the violation of these customs and laws involves various degrees of punishment from tribal ostracism to death. Tylor's contention that among savages "ethical laws stand on their own ground of tradition and public opinion, comparatively independent of the animistic beliefs and rites which exist beside them," does not derive any support from what we now know about the Australian aborigines, upon whom religion and religion alone imposes the rigorous sexual restraint in vogue among them. Sex relations and processes are essentially religious to their minds.¹

Thus, marriage, or what among them corresponds to marriage in more highly developed societies, is attended and hedged about with the most elaborate religious ceremonies. A marriage always takes place as soon as a young woman arrives at the marriageable age, that is to say, upon the advent of sexual maturity, a period of life almost universally associated in the savage mind with the supernatural and in practice hedged about with significant religious ceremonies. At that time when she has been allotted in marriage always within the strictest totemic limitations, she is taken by friends of the man to whom she has been allotted, also selected under the same restrictions, out into the "bush" where, with the assistance of a Churinga, a sacred object, made of wood or stone, closely associated with the totems, there is performed upon her an operation called *Atna-ariltha-kuma*, or cutting the vulva. This ceremony not only transforms the girl into a married woman, but also bestows upon her certain social rights and privileges, as well as imposes certain duties in connection with the tribal customs from which, up to this time, she

¹ Compare, among Christian peoples, the fact that birth and baptism, confirmation and marriage are hedged about with religious ceremonies. Even in civil marriages the official frequently reads or repeats a prayer.

had been rigorously excluded. She now becomes a real member of the tribe by becoming an active factor in its social life.

The Australian Blacks have no organized tribal government, recognize no hereditary authority, and have no chiefs. And yet the social control among them is rigid and, for their stage of development, sufficiently efficacious. The nearest approach to chieftainship is the influence exercised by the Alatinja, or local headman of the group. His chief functions are religious or grow directly out of the religious character of his position. The only "two other classes of men who are regarded as of especial importance are the so-called medicine men" and the men who are supposed to have "a special power of communicating with the Iruntarinia or spirits associated with the tribe."

The power of inhibition is strongly developed and is based wholly upon religious principles. It is seen in operation in the elaborate ceremonies by which the boys are initiated into manhood and the women enter into a certain degree of tribal life.

The first ceremony takes place, in the case of the boy, when he is about ten years old, and consists in throwing him into the air several times, a proceeding which is supposed to promote his growth to manhood, and in painting his body with a design emblematic of his totem. After this the boy associates wholly with the men and begins to look forward to the time when he will be fully admitted to all the tribal secrets. The first step has been taken in the transition from youth to manhood. The individual is becoming a part of the community, his environment expands, his life enlarges, his duties multiply.

After an indefinite period the second stage of initiation occurs, called Lartna, or circumcision. Here also the sacred ceremonies connected with the totems are much in evidence. The women dance in imitation of the Unthippa, or malicious women of the Alcheringa. The old men caution the initiate against the betrayal of the secrets he is about to hear, on pain of being carried off by Twanyirica, or the great Spirit. Then, during a perform-

ance in which the boy's totemic animal is imitated, he is instructed in the sacred traditions, the gist of which is that he is himself the re-incarnation of the never-dying part of his ancestors.

The final rite in this particular ceremony is Ariltha, or sub-incision of the penis, which is a kind of social recognition of an individual's adolescence. It initiates a man into an entirely new life, so to speak, by permitting him to take a wife if he so desires, thus still more intimately incorporating him into the tribal life and destiny. It is attended by elaborate religious ceremonies.

Still another rite which functions directly as a kind of social control is the Engwura ceremony, which admits the men of maturer years into the most sacred secrets of the tribe and its totems. The chief object in view in this instance is to preserve custom by bringing the younger men under the control of those who are older, and to teach them habits of restraint and hardihood. These lessons are imparted by means of frequent references to the Alcheringa ancestors, and are copiously illustrated by the Churingas. The initiate is impressed with the deep importance of compliance with tribal rules, and the superiority of the older men who are in possession of the secrets, the intention clearly being to prevent any disintegrative functioning by individuals, by emphasizing the social bonds that exist between the individual and the group because of their common bonds with the past.

In the Kurdaitcha ceremony, also strictly religious in its nature, the police power of the group over its individual members is illustrated. It describes, and in so doing limits, the functions of the blood avenger. The Ertnatulunga, the mysterious storehouse of the Churingas, "may be regarded as the early rudiment of a city or house of refuge. Every thing in its immediate vicinity is sacred and must on no account be hurt; a man who was being pursued by others would not be touched so long as he remained at this spot." Even wild animals are here "tabu and safe from the spear of the pursuing native."

Thus the little semblance of civil government which exists in the weak social integration of these savages is seen to spring directly from their religious views and customs.

The relatively high pedagogical element which belongs to all these social religious ceremonies cannot be discounted. Barbarous and even revolting to us, they are very sacred to those naive children of nature, and effectively bind their participants to certain definite customs, obligate them to obedience, fix the boundaries beyond which individual whims and passions must not go, in short, compel individual suppression for the wellbeing of the group life. That we have here, therefore, a socially dynamic factor cannot successfully be gainsaid.

Even while human association was still determined only, as some writers contend, by physical causes, the need for restraint upon individualism must have made itself felt. Very early in his career primitive man must have learned that it was better that all the members of a group should be moderately well fed, for example, than that a few greedy individuals should appropriate the greater portion of the food supply while others lacked. This will be grievous heresy to those sociologists who place the origin of religion at some stage even later in man's development than the appearance of "notions of a common territory, of a common interest and defence, of a common leadership and allegiance, and of a common culture." But it is evident that, long before such distinct social integration had been reached as is implied by the possession of territory, leadership, culture, and other interests in common, there must have been developed some means of social control persistent and powerful enough under all conditions to curb the few for the benefit of the many. Nothing known to history has been able to tame the "*bête humaine*," to curb man's egoistic interest like religious considerations. It is perfectly gratuitous to look for and set up some other principle of control when this one lies so readily to hand as far back as we can trace the race. We can cheerfully remit the vexed problem whether the

question of the food supply gave rise to the religious ceremonies now in so many places connected with it, or the religious beliefs occasioned the "taboo" and other methods of attempted control of the necessities of life, to the anthropologist and psychologist. For the sociologist it matters little whether it is ever settled or not. The fact that existing "primitive" men do attempt to control and regulate their food supply by religious sanctions remains thereby undisturbed.

In the Urabunna tribe of Central Australia, representing the more archaic type of natives, who inhabit a region where vegetable and animal food, as well as water, are very scarce, even relative to the sparse population, the Intichiuma ceremonies are, perhaps, the most important that are performed, and in them "the religious aspect is most clearly seen." The performance is always closely associated with the tribal totems, and its specific object is to increase the number of the plant or animal after which the totem is called. The end in view is the control of subsistence. This is accomplished by means of the familiar phenomenon of taboo. The members of some tribes, consequently, never eat their totem animals or plants at all, others eat them only during certain periods, others only sparingly, or when driven by hunger. The effect upon the economic condition of the natives can readily be appreciated. It is an attempted mediation of ends based upon the fundamentally religious conviction of the superhuman and the possibility of man's contact with it. In essence it in nowise differs from the efforts of good Christians to interfere with the processes of nature when they pray to God for the prevention of a famine or the cessation of a drought.

An illuminating example of the binding effect of religious belief on the social structure is furnished by this taboo system, so characteristic of the entire Polynesian race, and forming, indeed, the basis of its society. It has now differentiated into what are really religious, moral and social phases, but religious ideas distinctly underlie each phase, and supernatural sanctions support

them all. The system was most thoroughly developed, perhaps, in the Hawaiian Islands, where a widely ramifying network of prohibitions made nearly every conceivable action a sin at some time and punishable by the gods. The regulations covered the entire daily life of the people, and, although in many instances exceedingly oppressive, were rigorously enforced. Bingham, who arrived on the islands in 1820, just after what might be called the official abrogation of the taboo, assures us that up to that time the "Ruling Hawaiian chiefs insisted rigorously on the observance of the religious rites" and that the great Kamehameha I was entirely unwilling "to abrogate or relax the ancient system of tabu."¹ As late as 1818 a little girl had one of her eyes scooped out for the offence of eating a banana,² a fruit which, in common with other palatable things, was taboo to the female sex. Other irksome restrictions—meeting on an equality with the attractive males from foreign lands, for example, were also placed upon the women. Hence these, as well as the men, had begun to find the system hard to bear, though not always from the purest motives. At last, in 1819, by royal example, the ancient taboo was deliberately broken at a feast at which men and women sat down side by side, a strictly prohibited proceeding. The great crowd of onlookers was filled with fear, some of the feasters hastily fled the neighborhood, and even the instigators of the daring plot to overthrow established religious principles were still fearful lest the outraged gods should take terrible vengeance. But when nothing happened it began to be whispered around that the taboo was broken, the word was passed to the crowd, and with a great shout was carried to the ends of the islands. Oppressive to a degree quite inconceivable to an intelligent Anglo-Saxon, and overthrown in a moment of reckless frenzy by a constituency which it had controlled for generations, so potent had become the pedagogical in-

¹ Sandwich Islands, p. 55.

² Alexander, *A Brief History of the Hawaiian People*, p. 49.

fluence of the system, so thoroughly had it moulded men to obedience to social law and order, that it was scrupulously and rigorously enforced to the very last moment of its power.

And now as to the results. The official historian of Hawaii for the Board of Education under the late monarchy has this to say: "The effect of it [breaking of taboo] was like that of displacing the key-stone of an arch. The whole structure both of idol-worship and of the tabus fell at once into ruins."¹ Revelry and license immediately followed. Bingham, an eye-witness already quoted above, assures us that "licentiousness and revelry abounded." "The country was in confusion."² In fact, civil war ensued, in which the anti-taboo party won a decisive victory, when "Irreligion, heathen amusements, licentiousness and revelry, abounded, and atheism took the throne." Intelligent observers of the social life of Hawaii do not hesitate to affirm that the effects of that religious revolution are still felt to-day in the morally debauched condition of the native population. 'Civilized diseases' (!) are fast destroying the race.

Another and very conclusive and suggestive illustration of the conservative power of religion is supplied by the intimate inter-relationship of religion and law throughout West Africa, a region where the social structure is relatively very closely knit together, but where there are, nevertheless, no policemen and no jails, and yet private property is neither damaged nor taken from an individual member of the group, either bond or free, without due process of law. Business is carried on in a fashion to astonish the civilized and christianized Anglo-Saxon, or Teuton. To quote from a singularly open-minded observer and student at first hand of customs in this region: "as you walk along a bush path far from human habitation, you notice a little cleared space by the side of the path; it is neatly laid with plantain leaves,

¹ Ibid., *Brief History of the Hawaiian People*, p. 169.

² *Sandwich Islands*, p. 77.

and on it are various little articles for sale—leaf tobacco, a few yams, and so on, and beside each article are so many stones, beans or cowries, which indicate the price of each article.”¹ The owner of this primitive shop has calmly gone about his business elsewhere, maybe miles away. And Miss Kingsley adds, and this after years of intimate acquaintance with the natives, “I have never seen or been told of a case wherein a man’s or woman’s property had been seized and taken by another person.”²

Now, it is the unanimous opinion of travelers and ethnographers that the African trait par excellence is stealing, a survival, doubtless of primitive promiscuity of property. Theft prevails from one end of the continent to the other. No white man’s goods are safe at any moment day or night. No system of police penalties seems to be equal to the emergency. But the native’s possessions are absolutely safe from native pilfering fingers. Wherein lies the difference? What is the method of this effective social discipline? What is it that holds in leash such frail creatures of appetite and propensity, puts the curb upon their strong desires and suppresses the irruption of their passions in this direction? The answer is found in a single word, fetish, which, in turn, is based upon a fundamentally religious conception of the status of man in nature. Let us go with Miss Kingsley again to that shop by the bush path. She says “you will see, either sitting in the middle of the things, or swinging by a bit of Tie Tie from a branch above, Egba, or a relation of his—the market god—who will visit with death any theft from that shop, or any cheating in price given, or any taking away of sums left by previous customers.”³

The same keen observer supplies us with another illustration, this time in connection with the African’s views on lying. To his simple mind there is no intrinsic harm in lying if any one

¹ Kingsley, *West African Studies*, p. 408.

² *Ibid.*, p. 409. cf. p. 367.

³ *Ibid.*, p. 408.

is fool enough to believe him. Miss Kingsley assures us that she "would not take an African's word on any important subject." But even the savage recognizes that without some check and control in this connection, without some assurance of truthfulness, men could not live together at all. Hence we find the whole subject surrounded with an entirely different atmosphere in the presence of the fetish. Put an African on oath, make him call in a spirit to witness his statement, and, says Miss Kingsley, "I would stake my life, as I have many times already done, on the word of the wildest bush cannibal in all West Africa if that word were spoken under oath." Why? Simply because the African believes, and the belief has so firm a grasp upon him that it really controls him, that the spirit "will make the man who tells a lie in its presence swell up and burst."¹

As an illustration of the results accruing upon the undermining and breaking down of the religious sanctions among a highly civilized people, France may be cited as the most disastrous of modern, if not of all times. A few words in regard to it will not be out of place here.

During the eighteenth century religion had lost much of its virility and power all over Europe, and that among all grades of the population, more especially among the educated and ruling classes. The attitude usually assumed toward the prevailing forms of Christianity was, however, rather a passive than an active one. But in France the movement took the form of a violent and destructive passion of opposition. Speaking generally, the entire nation, through its representative men, wrought with feverish energy to expel the ancient faith from its heart and mind, and from every semblance of influence upon its life, and for the time being seemingly succeeded. Neither the remote nor immediate causes for this phenomenon need concern us here. They have been ably expounded by others. We have to do merely with

¹ *Ibid.*, p. 414.

the indubitable fact that the spirit of Voltaire's "Écrasez l'infame" had become the fanatic passion of a great body of his countrymen. And this phase of the Revolution it was, we insist, that stamped its character, was directly responsible for its terrible extravagances, for its violent and destructive results. "Nothing," says DeTocqueville, "contributed more to give its features that terrible expression which they wore." The philosophic historian was undoubtedly right. The supreme binding sanction having been formally abolished, after having been practically discarded by the people, there was nothing to hold errant human passions in check, to confine them within those safe and sane channels in which the nation's socialization had heretofore made such steady progress, and the civilized world beheld for the first time the spectacle of a human society, reputed the most advanced in the world, alienated not only from its neighbors but from itself.

In considering this unique phenomenon from the viewpoint of our thesis, that is to say, in order to make good the contention that the terrifically anti-social explosions of the Revolution were the result of the undermining and shattering of the religious sanctions, such as the belief in God, in the immortality of the soul, and in future rewards and punishments, it is necessary to contrast conditions in France with contemporaneous conditions in Europe, especially in Germany, Austria, Italy, and England. Industrially the conditions in those countries were much like those in France, only, perhaps, even worse. The peasantry everywhere was frightfully ignorant and hopelessly poor. Artisans were poorly paid, bread was dear, taxes were high. Socially the same class distinctions existed, although the French peasant was a freer man than his brothers, the feudal serfs of Germany and Italy. But everywhere alike privilege and inequality were the conspicuous social traits. Intellectually the same spirit of free enquiry was abroad, and a growing discontent and a vague idealism characterized the thinking of the latter half of the century. But in France

the doctrine of "equality," of "natural rights," so passionately preached by the philosophers, had filtered further down among the masses than elsewhere. Although the profounder thought of Germany and England had furnished the original material of this conception, it was first popularized in France. Morally the proletariat of all Europe was incomparably brutal and debased. License ran through all society. Court circles presented sad spectacles of demoralization. Many of the philosophers were notoriously licentious.

It is when we enquire about contemporaneous religious conditions that a great gulf opens up to our view between France and the remainder of Europe, especially England, where the transition from the old to the new conditions was made with the least friction, as we shall see later. It was in 1751 that the first volume of the work appeared upon which the intelligence of France was to feed for a generation prior to the Revolution. That work was the *Encyclopedia*. Its position on religious, philosophical, and political questions was extreme. Its authors boldly proclaimed their conviction that there was no God, that morality was a species of slavery unworthy of a free man, and that the uncivilized stage of progress in the world's history was the ideal condition. Nor were these merely academic conclusions. They were the bold statement of the results of well-nigh a hundred years of living and thinking in which the empire of the old religious ideas was shorn of much of its power. And when, at last, Diderot and his companions daringly focused the new thought into words the masses were ready to receive the new doctrines; they were eagerly accepted by at least a majority of the people of France, and the inevitable disappearance of the authoritative elements in government and morality speedily followed, as they have always done, upon the heels of a discredited religion. Nowhere else in Europe had the anti-religious propaganda made such progress. The significance of this fact is immense in view of the relative stability of social

institutions elsewhere when compared with the destructive results in France.

And the argument becomes somewhat stronger when we contrast the manner in which the principles of the Revolution were received in certain sections of France itself, with its reception in Paris and the country dominated by its spirit. Along the coast of the Bay of Biscay, and between the Garonne and Loire rivers lay a country the people of which "retained a strong attachment to their ancient habits, and particularly to their religion and its ministers."¹ "The priests—men of extraordinary purity of character—exercised there a truly paternal ministry."² In these parts people knew scarcely anything and cared less for the principles of the Revolution, and when, at last, it began to make itself felt among them, instead of finding a welcome as a beneficial reform, it shocked their sensibilities and was received as a persecution.

It is interesting to reflect that "The communistic revolution in Paris, 1871, while accurately speaking not avowedly a revolt of those holding to the economic views which bear this name, was yet thoroughly imbued with their spirit and was thoroughly atheistic. Its leaders raged and swore against the Almighty, massacred priests, profaned churches, and did everything within the scope of devilish ingenuity to evince their contempt for all things sacred."³

A discriminating survey, by way of contrast, of English industrial, intellectual, political, and religious life in the eighteenth and nineteenth centuries will reveal very clearly, we venture to think, how much religious belief influences the social life of a people, not only in the way of a restraint but as a positive dynamic for the progress of the organized communal life.

About the middle of the eighteenth century the English so-

¹ Thiers, *The History of the French Revolution*, II. 334.

² *Ibid.*, p. 336.

³ Lorimer, *Christianity and the Social State*, p. 193.

cial structure, as elsewhere in Europe, was under a tremendous strain. The old agricultural and industrial systems were passing away, and, as always in a transition period, when economic conditions are falser than usual, the sufferings of the labor population were great. The spirit of democracy, born as far back as 1688, was beginning to find a voice in men like Burke and Pitt. The triumphant and audacious spirit of revolt against established customs, rights and powers, spreading everywhere in Europe, and rapidly gathering strength in France for its great historic cataclysm there, was beginning to make itself felt in England also. Already, in 1740, spasmodic riots had begun, and sympathy with the French people was widespread, and it needed but little to start the English proletariat upon the same bloody road which its brothers in France followed with such terrible earnestness and ghastly thoroughness during the Terror. But, happily for England and the world, the adjustment to new conditions took place without such a cataclysm, and contrasted conditions in England and France to-day are evidence of the superior virtues of the peaceful revolution over that of fire and blood.

Can we put our finger upon the causative principle of this difference and trace it in its operations? Why this steadiness and sobriety of England's attitude, with scarcely a single serious physical conflict, during a painful and cruel social adjustment, instead of a wild orgy of anarchy as in France?

That the whole body of English political, religious, and intellectual traditions—the temper of the people—must be taken into account in such an enquiry goes without saying. The causes that brought about a peaceful revolution go far back in English history. No doubt, the fact that Englishmen are Englishmen and not Frenchmen has something to do with the phenomenon we are discussing. But it is worthy of note that England's being England did not prevent the life of its people in the eighteenth century from being ignorant, stupid and brutish; did not forestall the crushing weight of poverty that rested on the peasant and artisan

classes; did not bar coarseness and corruption with recklessness from the higher walks of life; did not keep the Church from a barren formalism and cold callousness to human need; did not, in short, prevent an industrial, political, moral, and religious condition of things which supplied just such soil from which bloody revolutions sprang on the continent. England's traditions and hereditary temper doubtless had much to do with her happy adjustment of trying conditions, but in this sense, that they enabled the Englishmen of the last half of the eighteenth, and the first half of the nineteenth centuries to welcome and use the agency which mediated between the old and the new, as a slower, but certainly more wholesome method of adjustment, namely, the religious revival that began with the preaching of Whitfield and the Wesleys.

It is true that the mere fact of sequence does not necessarily argue causal connection, but we venture to assert that one will search in vain for an explanation that will better meet all the requirements of the problem than the one here suggested. No other social force is discoverable in that day competent enough to meet the social problem and lead its solution in the wholesome direction which it took then and still pursues to-day. Nothing could so have repressed the strong passions that were smoldering dangerously in English industrial and political life at this time as the quickening of religious principles and ideals and their enthusiastic application to the situation. Only by the pressure of religious sanctions could consciences have been so aroused to alertness to the distinction between the right and the wrong, only so could minds have been molded to a sympathetic understanding of a dangerous situation. Only the appeal to love and fellowship in the Brotherhood of Man under the Fatherhood of God could have preserved a social equilibrium so seriously threatened, and which in France was destroyed in horror and bloodshed. The conservative power of religious belief was never more strikingly illustrated. Despite the noble principles which animated it—principles which underlie the modern state—the Revolution, repudiating religious belief, could destroy, but it could not build up.

It may be well to notice some of the objections to the conclusions reached in this chapter which have, in all probability, suggested themselves to the reader. They can only be referred to here and the possible lines of reply indicated.

It may, for example, be urged that a large number of historic instances of religious expression not only did not make for progress but must often have been detrimental to a wholesome social and ethical development, yes, must have been positively demoralizing to their devotees. What, to cite only a few cases, can be said of Phallicism, Mahometanism, Mormonism, religious persecutions, such as the Inquisition, and the extreme religiosity of sexual and other degenerates, as socializing forces?

It may be replied, in a general way, that the development of religion, in harmony with all other evolutionary phenomena, did not always proceed in a straight line, nor without checks and degenerations. Other instincts and social forces have been misapplied and abused by man, why not this one? It is not at all needful to deny or even to evade the fact that certain expressions of religion have been deleterious to their adherents. But there can be no manner of doubt that, when the whole field is impartially surveyed the good effects of religion vastly outweigh the bad. Even nature religions are always on the side of social order and tribal laws, that is to say, are identified with primitive morality, even though not always fitted to push that morality in the direction of higher ideals.

Replying to the objections in detail, it may safely be claimed that the so-called religious thieves, prostitutes, and murderers, which certain Italian criminologists especially love to parade before us, may be dismissed as having no bearing upon the subject. They must be regarded as wholly abnormal.¹ We do not permit ourselves to judge a nation's moral health by a few pathological

¹ Baer, *Der Verbrecher*, pp. 257 seq.; Garofalo, *La Criminologie*, pp. 85 seq.; Lombroso, *L'Homme Criminel*, I. 131 seq.

excrescences in its purlieus and jails. We do not condemn a church because it numbers among its members some hypocritical and unworthy individuals. Nor does it discount the value of religion as a progressive force that, here and there in the worldwide area of its influence, that influence is exercised in vain.

Of phallicism too little is yet known to pass judgment upon its place in the evolution of religion and its effect upon the social structures in which it flourished. The reader will search in vain in the pages of Tylor, Müller, Spencer, Reville, Waitz, Roskoff, and other authorities, for even so much as the mention of such a religious cult. Bancroft devotes to it only eight pages of somewhat vague generalization in his extensive work on the Native Races in America.¹ R. H. Matthews is in error when he classes such rites as we have described as practiced by the Australians as belonging to phallic worship. As a religious system it must be definitely restricted to the worship of the phallus.² The still extant phallicism of Japan, as described by Buckley,³ certainly differs *toto coelum* from that which the excavations of Pompeii and Herculaneum reveal as having flourished at that time among the Romans, even if we do not ascribe all the erotic art of the period to the influence of this cult. In the former case it seems to be a naive and comparatively innocent nature worship, with none of the disgusting excesses of the worship of lust met with elsewhere. In the latter instance it was a distinctly libidinous orgy of the already sated lust of a practically atheistic society. It is vastly significant that this particular expression of religion never took root among the Anglo-Saxon and Teutonic peoples, though there are traces of it even among them.

¹ Works, III. 501 seq.

² Cf. Proceedings of American Philosophical Society, 1900, p. 622.

³ Phallicism in Japan.

Indiscriminate condemnation of phallicism is, therefore, somewhat unwise in the present state of our information. It is a perfectly safe inference, however, from what we know of the habits of the savage and barbarous mind, that primitive man could have seen no impurity or impropriety in the gratification of any natural appetite, and that the worship of the fecundating principle, the creative power of nature, exemplified so mysteriously and so potently in himself, was the meetest act of worship he could adopt. Such naturalism is still practiced by some of the Russian schismatics.¹ There is no evidence that originally this cult had any connection with those indescribable acts of sexual excess and even beastliness usually associated with it in our minds to-day. The impure excesses, the disgusting eroticism of later periods was the result of decay, an indication that the religious spirit of the cult had succumbed to the sway of that sexual instinct which its own symbolisms only too strongly called into play. If phallicism did at one time and another prevail as extensively as some would have us believe, it but affirms what adolescent psychology teaches us of the close inter-relation of the sexual and spiritual, how the fierce stimulation of the former often goes hand in hand with the latter, though there is no proof, as yet, of any causal connection between them, and illustrates the strength of the sex-instinct with which religion has always had to grapple and which it has, at least among the higher races, now so thoroughly subdued.²

And as to Mahometanism. From a social standpoint it may be classed with ancient Mosaism, which also tolerated polygamy. Both cults were, however, distinct and relatively successful efforts to regulate and control sexual excesses. Mormonism belongs to that large class of instances which illustrate but too well the success of religious belief as a conservator and method of social

¹ Leroy-Beaulieu, *The Empire of the Tears*, III. vii.

² See for some discriminating remarks hereon, Marshall's *Instinct and Reason*, pp. 309 to 315.

control. Imitation is the sincerest flattery. That religion is often abused for the sake of an ulterior and unworthy purpose does not justify the hasty conclusion that its influence is always injurious. And, doubtless, the original roots of this new mechanical and systematic alliance of the animal with the spiritual are to be sought for, psychologically, in over-stimulation of the religious element in its first devotees.

And as to those phenomena so luridly illustrated in the pages of history by the Holy Inquisition, it will be enough to call attention to the patent distinction that, while the name of religion was invoked in justification of its excesses, it was really the interests of an institution that supplied the motive force for those fierce activities. Religion had long had an artificial civil sanction, and dynasties had come to depend upon its dogmas, hence, though the enforcement of religious unity for the salvation of souls was perhaps the original purpose of the Inquisition, as well as similar persecutions carried on by Protestants, a large admixture of lust of power and wealth also came into play.

CHAPTER V

RELIGION AS A PROGRESSIVE FORCE

The problem which we shall now discuss may be formulated in detail as follows: The course of human history shows a continued, though not always uniform, progress from a lower to a higher order of society, the substitution of a rational and ethical process, controlled by altruistic principles, as against the so-called cosmic process which works according to the law of natural selection, and in which the strongest survives at the expense of the weaker. For the sake of argument it may be admitted that certain controlling instincts in the lower animals in their struggle for existence are sufficient in themselves for the development of the individual and social human organism up to a certain point. But it must also be admitted that when they advance beyond that point these selfsame passions tend to become, and do become, forces of disintegration, degeneration, and death. This being true, it is apparent that, if the progress from the lower to the higher is to continue beyond this point, these disintegrating and death-dealing forces must not only be subordinated and suppressed, there must also emerge a new and sufficiently potent countervailing force, capable of creating new desires and purposes, higher than those which actuated man before, and yet as thoroughly germane to his nature as those which formerly controlled him. But it is evident that such a force cannot be mechanical, but must be rational, cannot be physical, but must be psychical. It must not come from without, but from within the organism itself. In other words, such a force must be in the nature of an ideal principle.

Now, the history of the past makes it sufficiently manifest that this ideal principle is supplied by religion, and by religion only.

Psychologically it can be postulated only on the supposition that God exists. Empirically it is conditioned upon the belief that God helps. An injunction and impetus to a higher life, to be persistently effective with large masses of men, must come to them not merely with the authority of a single human mind, no matter how overshadowing, nor yet of a combination of such minds. To be effective it must have the universal significance of something absolutely worthful. And it is precisely this which is supplied by religion and religion alone. In our review of opinions about the functions of religion we saw how the opponents and deprecators of religion, Comte, Spencer, Ward, Guyau, all found it necessary to call in its aid, freshly labelled, just as soon as they reached the point referred to above in the social development, when the principles and forces which they had invoked in their attempted explanations of human progress inevitably beget, in their turn, other private and social evils to threaten the good of the whole. The attempt to identify this ideal principle as Reason¹ may be considered to have suffered final shipwreck when Kant felt himself compelled, inconsistently, to lug in a kind of religious guarantee for the achievement of the summum bonum. The suggestion that the cosmic drift is in that direction, holding this principle, so to speak, in solution, and destined ultimately to reveal it fully, is thus referred to by Huxley: "The theory of evolution encourages no millennial expectations." The "cosmic nature born with us and, to a large extent, necessary for our maintenance, is the outcome of millions of years of severe training, and it would be folly to imagine that a few centuries will suffice to subdue its masterfulness to purely ethical ends."²

Religion, then, is the only idealistic principle. It is the main spring of all altruism. It is the chief mediating principle between the social is and the social yet to be, between the social wish

¹ In the Kantian sense, of course.

² *Evolution and Ethics*, p. 85.

and the social ought, between the ideal and the real. Investigation will reveal this to be true not only of its higher manifestations, but even of its lowest forms.

The role which faith, belief in a person or persons, in an institution, in a national ideal, has played in the long process of human socialization, has never been sufficiently investigated and evaluated. In a rather vague way men have always been conscious of it as a practical necessity, as something growing out of the needs both of the individual and the group, in order to social cooperation and success, but it has thus far eluded analysis and definition. Without it, of course, the simplest family relationship would be impossible above the purely biological. Without faith in its parents the child's developing individuality could not orient itself at all in the bewildering complex of connections into the midst of which it finds itself already thrust at the very first dawnings of consciousness. Without it, and this is another commonplace, business and government, the latter more especially in its democratic forms, would be utterly impossible. But this faith, this belief in men, in institutions, in gods, in God, is always an idealization, a spontaneous creation of something better or stronger, higher or more enduring, than anything given by immediate experience. True, it is nearly always grossly anthropomorphic, it is the best, the most potent that we are conscious of in self raised to its highest powers. But as such it pulls and lifts us up toward its newer standards. Granted that men first think their gods, it is nevertheless true that their thoughts of god afterward make them godlike.

The mere belief in a God, a Superior Being, a Higher Power, necessarily raises man's thoughts above himself, stimulates a desire in him for something more than he has, or knows, or is. It is true that in the nature religions of savage tribes, such as those in Africa, the malevolent gods predominate and religion seems to be more an agony of terror than a pursuit of the good. But the latter phase is there, be it never so slight, and to the extent of its presence

the result is beneficial. In the most fantastic animism, or crudest fetishism, or irrational polytheism, there is always at bottom the universal principle of the supernatural, the absolute, with all its germinal promise and potency. And the history of religion reveals, significantly enough, that this primitive dualism of good and evil becomes ever gradually less absolute as men rise in the scale of culture. In proportion as man's thought of the gods became more definite, in proportion as he invested them with higher social meaning, his assurance of the final triumph of the good became clearer, and at last evil itself comes to be looked upon either as a mere passing phase of existence or as a means to a greater ultimate good. Christianity, idealistic to the core, altruistic always, gives clear and concrete expression to the conviction of the final harmonizing of human life in God: "We know that all things work together for good."

To be somewhat more definite, what does the belief in his god do for the savage socially? One of the distinguishing features of his religion if, indeed, it is not the principal one, is that it is not an affair of the individual but of the community. It identifies the individual with the tribal unity in such way that when, as often occurs, his natural appetites and the well-being of the tribe happen to clash, he recognizes an authority which holds the former in check for the benefit of the latter, and often compels him to subvert himself, a part, even to self-immolation, for the welfare of the tribe, the whole. It is not meant, of course, that every individual always consciously lives his life with such larger social duty in view. The most enlightened citizen of the most highly civilized nation is not so thoroughly co-ordinated into his environment as that. Man's real basis of life is too far below consciousness to make such a thing ordinarily possible. But the higher purpose is there, in sub-liminal solution, so to speak, but ever ready to crystallize into a definite consciousness under the appropriate stimulus, and eliciting then a social behavior which sacrifices what it conceives to be its own individual interests for the welfare of

its fellows. And this devotion to the common welfare is the very core of primitive morality, and the soil out of which have grown those civil virtues of loyalty to the nation and devotion to country which have borne so much heroic fruit in times of danger and distress in all societies. And out of the habits fostered by that tribal morality peculiar to all primitive people, a morality so narrow and abhorrent to the modern culture peoples, has sprung that ethical universalism which strives to embrace all mankind in its benevolence. Thus the germ of the very highest altruism, briefly comprehended in the Christian doctrine of the Brotherhood of Man under the Fatherhood of God, lies imbedded in the most primitive savage belief in a Superior Power.

Once more. When the Greenland Esquimaux, or the Laplander, or the South American Indian, in his efforts to become a Shaman, or Medicine Man, that is to say, to come into possession of a spirit, retires for long days and nights into desert places, deep forests, or high mountains, for fasting and meditation, what is he achieving of social value? It must be granted, we think, that even so inferior a human being, by such solemn exercises, raises himself, for the time being at least, above the purely sensual and experiences somewhat of that supersensuous which it has ever been the craving of the finer spirits of the race to achieve. Certain it is that he strives, like unto medieval saints, by keeping his body under, by "denying the flesh" to "live by the spirit."

Von Humboldt, referring to a religious practice which he witnessed in South America, that of blowing the "botuto" or sacred trumpet, to make palm trees more fruitful, says: "On the banks of the Orinoco there exists no idol, as among all the nations who have remained faithful to the first worship of nature, but the *botuto*, the sacred trumpet, is an object of veneration. To be initiated into the mysteries of the *botuto*, it is requisite to be of pure morals, and to have lived single."¹

¹ Travels, II. 363.

But what is this but an ideal of worth, set not only before the candidates for the "botuto" mysteries, but before the entire tribe, of a better life than that of their ordinary experience? And when it is measurably realized by individuals here and there who, in consequence, are admitted to this "priesthood," who can say that their success does not act as an incentive to still others to be "pure" in morals and live "simple"?

Again. When the Australian Blacks refrain from eating their totem animals or plants in obedience to the "taboo," and do so in the face of dire temptation due to hunger and want, can it be denied that they are thereby being taught, crudely, it is true, from our higher cultural standpoint, but efficiently for their environment, some of those lessons of self denial and surrender which the Christian church has been seeking to inculcate upon the world for nearly two thousand years, both by precept and example, and which all but thorough-going Nietzscheans unite in regarding as useful and lauding as praiseworthy? Is there no social significance in the ceremonies by which the native is prepared for beholding, for the first time, the Ertnatulunga, or sacred places of the tribe? "If he be what the natives call *irkun okmirra*, that is light and frivolous, and much given to chattering like a woman, it may be many years before he is admitted to the secrets." Referring to these ceremonies Wundt does not hesitate to say: "Es sind, wie man sieht, Normen einer primitiven Moral, die * * * von den sittlich-religiösen Geboten der alten Kulturvölker, wie sie uns z. B. im mosaischen Dekalog überliefert sind, [nicht] allzuweit abweichen."¹

Among the Creek Indians the important festival of first-fruits gave positive evidence of efforts on the part of the participants to rid themselves of moral taint, of sin. A quotation from Waitz will make this plain. "Der Priester oder "Feueranmacher," welcher dabei ganz weiss gekleidet war—Weiss war das Symbol der Rein-

¹ Völkerpsychologie, II. ii. 263.

heit und des Glaubens hier wie bei den Irokesen—besorgte die Anordnung desselben. Mehrtägige strenge Fasten des Volkes machten den Anfang. Darauf brachte jener das neue heilige Feuer zum Altar, . . . verbrannte in ihm nach sorgfältiger Auslöschung aller alten Feuer etwas von allen Arten der neu geernteten Früchte, und ermahnte ausführlich die Männer und Weiber. Jene nahmen die "Kriegsmedizin" ein, die in heftigen Brech- und Purgirmitteln bestand, diese badeten und wuschen sich mit Wasser: alle Uebelthaten des vergangenen Jahres, ausser Mord, wurden in Folge hiervon als getilgt betrachtet und das Fest mit einer reichen Mahlzeit am vierten Tage beschlossen. Dass die Vorstellung einer Reinigung von Sünde diesen Ceremonien zu Grunde lag, insbesondere beim Baden und beim Trinken . . . wird bestimmt versichert.¹

To deny the idealistic element and influence of such religious beliefs and practices is impossible.

The Ertnatulunga of the Australian natives have already been referred to. They are the storehouses of the most sacred possessions of the tribes. Everything in their immediate vicinity—plants, animals and human beings—is regarded as sacred and must not be hurt. No display of arms is permitted near them. Quarrels in their neighborhood are prohibited.

A similar belief and practice prevailed among some of the California Indians, whose *vanquechs*, or places of worship, rude inclosures of stakes, within which the image of a god was placed, were sacred and could be approached in a reverent manner only. But each *vanquech* was also a city of refuge, "with rights of sanctuary exceeding any ever granted in Jewish or Christian countries. Not only was every criminal safe there, whatever his crime, but the crime was as it were blotted out from that moment," so far as the actual criminal was concerned, though, "for justice sake," the pun-

¹ Anthropologie der Naturvölker, Dritter Theil. p. 208. See also, Roskoff, Das Religionswesen der Naturvölker, p. 161.

ishment from which he escaped was meted out upon some of his relations; which seems to have been a curious attempt to satisfy both the claims of mercy and of justice.¹

The reader has already, as a matter of course, thought of the similar and well-known ancient Jewish legislation with its provision of six cities of refuge for the protection of offenders against the wrath of the "blood avenger."² Such "sanctuaries," it is also well known, had their counterparts among the Greeks and Romans, and other peoples.

Now, it is universally conceded that this right of sanctuary was one of the most humane features of ancient civilization, in that it was a positive mitigation of the cruelty and injustice that were only too common. It matters little, if it all, for the purposes of the argument, whether the religious instinct first prompted this mitigation, or whether the religious features of the practice were later superposed upon it as an additional sanction. The fact remains that, historically, this mitigation of cruelty and injustice was thus promoted by religious belief and practice, and that among peoples widely separated from each other in space and time. If the result was humane among the ancient Jews, Greeks and Romans, if among those nations it tended toward their survival by cultivating a larger sympathy and making wider room for the exercise of justice, it must, in some small degree at least, have accomplished the same results for the Australian and the Indian, and wherever else the institution was developed. There can be no reasonable doubt that, in addition to conserving life, this practice imposed a wholesome restraint upon individual passion, supplied opportunities for and thus cultivated mercy and forgiveness, fostered a social conscience, and promoted respect for law by guaranteeing justice both for the offender and the offended. The larger morality of to-day undoubtedly has its basis in the habits which were originally

¹ Bancroft, Works, III. 166.

² Joshua, xx. 7-9; Numbers, xxxv. 6-28.

formed and grew strong under the fostering care of just such institutions as this, and the part which religion played in suggesting and maintaining such institutions is one of its most beneficent services to social progress.

The extraordinary religious awakening in England in the eighteenth century, referred to in the previous chapter, not only functioned effectively, as there shown, in the way of restraint. It did more. It exerted a positive directive influence upon the whole of English life and thought by engendering a most extraordinary enthusiasm for righteousness, which, at first largely theological in form, soon became social in its effects. The social conscience suddenly awoke, a great wave of humanitarianism swept over the country, and moral principles began to be applied as never before to commerce and politics, and struggles for social reforms began to take shape in a dozen different directions at once. One scans the pages of English history almost in vain for any sign that either Church or State, during the first half of the eighteenth century, made any efforts to alleviate the sufferings of the poorer classes, or were even conscious of their hapless condition. On the part of the State the Workhouse Act of 1722 seems to have been the solitary symptom of such consciousness and effort during this period. As a factor in social control the Church was a negligible quantity. "It was an age of political prelates, of absentee bishops and fox-hunting parsons."¹ But after the middle of the century, when the religious revival was at its zenith, there came into being a social activity unparalleled for magnitude and results in England or any other country. With the opening of the nineteenth century this phase of the movement seems altogether to have overshadowed all its other features. Nothing was now heard of but reform. "Prisons, poor laws, penal codes, emancipation, reform bills, Jewish disabilities, slave trade and slavery, the relief of Dis-

¹ Davenport, *Primitive Traits in Religious Revivals*, p. 135.

senters, the establishment of schools, the reform of asylums, the founding of hospitals, the improving of cottages, the establishment of charity organizations for a multitude of purposes,"¹ all these occupied men's minds and enlisted their energies. And it is of the utmost significance that the men who originated and so earnestly championed these various measures were, almost without exception, the men who were most thoroughly swayed by the new religious fervor. The men who thought and felt most deeply religious were the men who felt their obligations to their fellows most and enthusiastically devoted their energies to their social betterment. For example, "The life of Samuel Wilberforce is almost a history of the establishment of these agencies for making and organizing social forces." Scores of others, all men of deep religious conviction, might be mentioned, in and out of Parliament, the champions of the larger and better national life.

We may be allowed to quote here the words of a not very sympathetic historian in summing up the benefits accruing to England from this movement: "In the nation at large appeared a new moral enthusiasm, which, rigid and pedantic as it often seemed, was still healthy in its social tone, and whose power was seen in the disappearance of the profligacy which had disgraced the upper classes, and the foulness which had infested literature ever since the Restoration. A new philanthropy reformed our prisons, infused clemency and wisdom into our penal laws, abolished the slave trade, and gave the first impulse to popular education."²

That is to say, the religious consciousness, become quick and sensitive, caused the acceptance, pursuit, and achievement of newer and higher ethical ideals.³

¹ Hall, *The Social Meaning of Modern Religious Movements in England*, p. 109.

² Green, *History of the English People*, IV. 150.

³ As a matter of interest, as well as furnishing clues for further investigation, we quote from a pamphlet by W. T. Stead on the religious awaken-

Again. One of the most widely ramifying religious beliefs is that of the continuance of life after death, with its almost inevitable correlate of the soul's future happiness or misery. And even though this latter feature, as Tylor maintains "seems scarcely known to the lowest savages," historically it appears in savage theology at a very early age, and, for our point of view, it matters not at all how it became "superposed on more primitive doctrines of the future life." It is discovered in every part of the world, and among men of every degree and variety of culture. It would be foolish to doubt its important bearing upon the thought and life of mankind. It has been, says Le Bon, "the principal strength of the great religions which have conquered the world and have endured."¹ The question is, are men better or worse because of this belief? Of what social value is the belief in immortality to mankind?

For example, the Achalague, of Florida, believed that "those who had lived well would be happy after death, whereas the wicked would be carried to a destitute and wretched existence." Guinea Negroes believed that souls, "on reaching the river of death must answer to the divine Judge how they had lived." Among the Dayaks, of Borneo, it is said that "as the smoke of the funeral pile of a good man rises, the soul ascends with it to the sky," while the reverse happens in the case of the bad. In West Africa the Nuffi believe "that criminals who escape punishment here will receive it in the other world." The Yorubas divide their hereafter into an

ing in Wales in 1905, the following "record of revivals" and the supposed results for the social life:

12th century—The Cistercian—Magna Charta.

13th century—The Friars—Parliamentary Government.

14th century—Wyclif—Peasant Revolt.

16th century—Tyndale—The Reformation.

17th century—Puritanism—Fall of Despotism.

17½ century—Quakerism—Revolution 1688.

19th century—American—Era of Democracy.

¹ *The Psychology of Socialism*, p. 83.

upper and a lower region for the righteous and the wicked. The Khoi-Khoi Hottentots give up the bodies of criminals, victims of vendetta, slaves killed by their masters, enemies killed in combat, to birds of prey and beasts in order that, after they have been devoured, they may become vassals of Gaunab, god of evil. Many other instances might readily be cited, but these will suffice as illustrations.

Tylor is inclined to deny that this doctrine is a "native conception," but must be regarded as the result of Christian or Moslem influences. Ratzel, referring to the Polynesian mythology, says, "The place where the wicked are tormented, which is represented as the night of everlasting death, and as a dark deep place at the back of heaven where the stars are hung, may well have been imported from some foreign schools of thought." But the ancient Hawaiian formulation of the belief in connection with the "taboo," is thoroughly consistent. Similarities of this kind, furthermore, are much more readily explained on the broad principle of the unity of the human mind than by the mechanical and always readily subservient theory of imitation. Waitz suggests that the divisions which the 'natural' races imagine as existing in the future life are based upon social, not moral distinctions, and cites the Milu and Wakea of the Polynesians by way of illustration. Milu is a place of carousal and rowdyism, Wakea a dignified spot for the chiefs. Is rowdyism a social or a moral distinction? Does it really matter which it is? Walhalla, he further suggests, was only for the brave. Is bravery a social distinction? Schultze¹ even argues that, having no conscience, the lowest savages feel no guilt, hence can have no conception of what we know as moral retribution. But he himself has described for us the self-imposed duties of the fetish worshipper, with the resulting discipline, which, in so many words, he refers to as an "ethicising factor." As a matter of fact, ethnography knows no people without at least a

¹ *Psychologie der Naturvölker*, p. 147.

rudimentary conscience. It may, then, be taken for granted that the belief in a future world always rests upon a basis of moral ideas, no matter how crude.¹

But the late development of this idea may readily be granted without discrediting the cultural results which have inevitably followed upon its appearance. These are so self-evident that it seems useless to rehearse them to the reader, and they are so beneficial that it requires no argument to demonstrate it. Whether originally derived from an independent source or not it is a fact that it now stands, universally, in the closest relation to morals, mightily reinforcing man's sense of "oughtness." Briefly put: With the appearance of this idea of a retributive immortality, this present life shrinks vastly in importance in one direction in man's estimate and expands in another. The future life becomes the goal of his endeavor with this present existence as the period of preparation for it. But only the good in this life will be happy in that other life. Even a "naive" savage may be trusted to make the evident deduction. It needs scarcely to be added that the argument is not in the least impaired by the admitted fact that the "good" life of the savage is far from what the culture peoples understand by that word. But even a savage may lead a life that is "good" relative to his surroundings.²

But is this all that the hope of immortality can do for the race, to act as a kind of police power for its moral restraint? There is a further and more important advantage connected with it, which grows directly out of the one just mentioned. Man's conception of heaven is always as something higher, better, happier than his present; that is to say, is always an idealized existence. It is an affirmation of an ideal of goodness and happiness, the latter, perhaps, predominating, even in the higher religions. Then, in so far

¹ De La Soussaye, *Manual of the Science of Religion*, p. 238.

² Cf. Lecky, *History of European Morals*, II. 4.

as he seeks to be worthy of that ideal, he reproduces it more or less in his life and even in his surroundings. In China, for example, heaven "was identified with the principle of order, and measure, and just custom, and became the pattern of right for those upon the earth."¹ And we are here at the psychological spring not only of all moral progress in the past but of the possibility of moral improvement in the future. Because man never quite realizes his ideals the goal of endeavor remains constantly before him, is always in process of enlargement. Granted that man first painted his heaven with the colors which he saw around him in life, afterwards he just as certainly sought to color his life below with the tints of the glorified heaven above. During the cave-life of the Reindeer age the bones of the dead were sometimes painted red. A similar custom prevails among some savages to-day.² The explanation is that, having conceived the color of spirits to be red, the savage sought, by painting the bones of his dead, to make them conform to the spirit world.

As in the past, so to-day, so always, man will be incapable of his best endeavors unless, in spite of the grim certainty of physical death, he can project his individuality forward, unless he can think of himself, and believe himself, to be a personality which will consciously continue to exist and act indefinitely into the future, it matters not what particular form that future may assume. In other words, for his fullest development man must be convinced that there is a reality—a heaven—which corresponds to the sensations aroused in him by his religious beliefs. As over against the sordid materialism which can only grovel, or an insane pessimism which can only think in negatives, it is characteristic of the religious spirit to posit a moral meaning for the universe, the persistence of moral developments. And this carries with it, as a necessary corollary,³ the conviction that an individual who can "think

¹ Galloway, *Studies in the Philosophy of Religion*, p. 133.

² Goblet D'Alviella, *Hibbert Lectures*, 1891, p. 18.

³ See *per contra*, Wundt, *Human and Animal Psychology*, p. 440.

god's thoughts after him," and feel the universal pain to-day, will not, cannot miserably cease to be whenever his house of clay shall chance to crumble into dust. And so long as men shall continue to live from such a universal point of view it will be impossible for them to live, with an easy conscience, at the beck and call of every natural lure, indifferently applying their energies to the achievement of any momentary inclination, good or bad. If, correlated to man's final ideal of worth—heaven—the universe has a moral meaning, then, and only then, has he something to strive for, duties can be rationally opposed to inclinations, the pleasant is not necessarily the good. Without such an ideal the whole moral content of life would lose its significance. The hypothesis that moral development must or may come to an end inevitably invalidates, both in theory and practice, any possible sanction to do or leave undone; the moral purposiveness in human action would be gone. Heaven is therefore an ethical necessity which defines a rational end toward which all human activities may be worthily directed, not only as the time and place of objective reward, but as the adequate subjective consummation of hopes and fears—the ideal completion of existence.

Why, then, do not normal men steal? Honesty is not a human instinct. True, by immemorial precept and example, by hoary inhibitions and restraint, we are now early taught the great distinction between the *meum* and the *tuum*. But that mechanical compulsion does not explain why the vast majority of intelligent men will not steal, even when convinced that it would be to their obvious material advantage so to do. Why do not more men commit adultery, even when they could do so with impunity in secret, gratifying passion but escaping the social odium due to such a course of conduct? It cannot be maintained that men are honest and pure because they recognize that thus and thus alone they are in harmony with certain so-called great collective cosmic ends. The individual's desires and passions care nothing for these cosmic ends. As a matter of fact, men are as unconscious of such

ends as a babe when it seeks its mother's breasts. Neither the immediate nor remote future well-being of society makes much of an appeal to man's intelligence when sense gratification is immediately at issue. Then why not be a thief or debauchee? The answer is plain. Men do not do wrong simply because it is wrong. That is to say, they recognize a moral meaning in life, they postulate a universe controlled by laws spiritual as well as physical, they formulate and are guided by judgments of worth. For them the good is the ought to be of things, the bad is the ought not to be of things. Sooner or later the bad will necessarily spell failure, the good will mean success; an imminent principle favors the good, and that because things are directed and controlled by God. Such the simple logic of the ordinary mind, the pedestal of reason upon which religion rests as a sufficient sanction for right conduct. True, all this may be but the passionate affirmation of a universal desire. Then, whence that desire? Why does humanity seem determined to put the imperishability of the individual beyond all doubt? The answer is that the human mind and such belief seem to have been made for each other. The whole system of things in which the race finds itself demands such a conviction. Of course, if materialism is right, if the immortality of the human soul means no more than the imperishability of the material atom, then is Kidd justified in his argument, and religion, beyond the possibility of reenforcement by reason, is an ultra-rational, if not irrational sanction for what seems to be, judged by immemorial results, completely rational conduct.

Again, without at all approving the doctrine of total depravity as it is usually understood, or rather misunderstood, it may be truthfully said that human nature as we know it can as ill afford to dispense with any efficient motive to right living as it can deny itself the stimulus of any great hope. Life, in so far as it is rational, is always the consequence of belief. Inevitably, if a man believes that life is limited to the brief span between the cradle and the grave, and that, therefore, this present is the

sole sphere of recompense for good and evil, if recompense there be, then, whenever virtue fails to result in good, immediate or future, the only possible motive for it is at once superseded and perseverance in it becomes nothing short of folly. Historically it is impossible to maintain that any large number of men for any length of time were ever so enamoured of virtue that they practiced it for its own sake alone. He is a poor judge of human nature who asserts that men need no further motive to virtue than virtue itself. Selfishness and passion even now, after untold generations of social discipline, continue to beat against the barriers of society and threaten to sweep them away. On what principle then do large numbers of men prefer virtue to vice? The answer is plain, the belief in a retributive immortality binds them to this preference. The carping critic will doubtless be ready to say, as has been often said, that such a sanction for conduct is, at best, a low one, purely hedonistic. But with the casuistry of the case we have here nothing to do. Our argument just now is this: whatever weakens belief in a future world by so much contracts the possibility of those manifestations of human agency which, with one accord, we recognize and esteem as worthy and which, in exceptional instances, rise into the region of the sublime and elicit universal praise. Blot out man's belief in a retributory immortality and you seriously narrow the sphere of his activity and sensibly diminish the grandeur of his life. Sacrifice, of interests and prospects, even of life itself, conduct which has made forever illustrious the memory of patriots and reformers, confessors and martyrs, would no longer find a sanction sufficient for its exercise. "He who loses his life shall find it," is foolishness according to all standards lower than the religious one. And even with religious faith to teach and strengthen men, the saints and martyrs are still few. Not yet has the mere theoretic fusion of personal ends with the great collective human aims produced its long succession of heroes. Not yet has science, even in this its so-called golden age, supplied the world with a single inspiration

or a solitary noble hope, upon the moral side. Spencer's autobiography closes with the pathetic wish that his own unfulfilled yearning for a solution of the mystery of existence could have been satisfied.¹ On the contrary, men are more insistent than ever with their social complaints, the air is vocal with the cries of human disappointment. Not yet have the endeavors of mankind been stimulated toward any useful end by the practical denial of God and the conviction that this life ends all. But, given an ideal propulsion like that supplied by the belief in immortality, and there is no discipline, no sorrow, no loss so great but that an ample recompense for it may be had in the eternal reaches of futurity. Not that the race would immediately lose its virtue if deprived of its belief in immortality. Dutifulness would doubtless still be seen, but certainly without the large horizon which religion lends it. Virtue would still exist, but the fine flavor of it would be gone. The ideal would be absent, and that, if once lost, would be irreplaceable. Not to multiply words, my meaning can perhaps be made clear by an illustration. When, in the hospitals of Paris, "the Sisters of Mercy yielded their places to secular nurses, the duty done was the same, yet not the same; it missed the special charm of devotion, of piety. What, then, was the secret of this charm? It is told that the Sisters whose task is hardest and most painful, such as they who spend their lives in ministering to the fallen abandoned women in the great cities, sometimes feel their hearts sinking within them at the contact with so great and terrible impurity; then they retire into the little chapel set apart for them and pray awhile before the altar, and when their prayer is finished, they are strengthened again for their ministry."²

"It was even so with the Master himself, who continued all night in prayer to God."

¹ Autobiography, II. 547.

² Welldon, *The Hope of Immortality*, p. 138.

Interesting illustration and corroboration of all this is found in those two peculiar books, *Varieties of Religious Experience*, by Professor James, and *The Psychology of Religion*, by Professor Starbuck. Let not the reader imagine, however, that we are inclined to set overmuch store by such laboratory interpretations of religion as these two works attempt. The method is too much that of the pathologist. The noticeable thing from our standpoint is the matter-of-fact way in which these two professors, the one at Harvard University, and the other at Leland Stanford University, accept and discuss, with the nomenclature of the laboratory, the everyday phenomena of Christian experience as something real, as accurate psychological facts, and do so even to the point of credulity.

What did Professor Starbuck's researches reveal on the precise point before us? What about the motives and purposes of the religious life to-day? Hear him: "It is a fact of considerable significance that almost never is a distinctly ego-centric impulse mentioned as a religious motive" by those replying to his 'questionnaire.' On the contrary, the precise counterpart of such impulses are much in evidence, showing that the subjects have felt and acquiesce in "the necessity of lopping off and plucking out exaggerated and harmful tendencies of self-activity which make the highest personal or social perfection impossible. The person has gained the power of standing outside his life and judging it; and of feeling within himself the strong, racial impulses that are likely to rupture the unity of his own being." And Professor Starbuck classifies three resulting groups of ideals, either as "they take shape in some form of helpfulness to others," or in the "more abstract and spiritualized form" of "the love and service of God," or as "the desire for oneness with God." "From childhood to maturity the trend of life has been persistently away from the self-assertive, ego-centric instincts towards those which are society centered and God centered." It "seems to be one of the great streams of religious development,

to give those deeper racial instincts which are consistent with self-development and the development of society the fullest possible expression, and gradually to transform and enlarge them into spiritual forces." In other words, religion functions among a culture people like ourselves just as it does among the nature peoples. It shifts the individual's attention from self to society and in so doing makes him a better citizen.

CHAPTER VI

THE RELIGION OF THE FUTURE

If the position which we have taken has been sustained; if religion supplies, as we have shown, the real bases for social progress, it results that its opposite, non-religion, irreligion, pessimism, is the very solvent of society, the negation of all progress.

Let us test this conclusion by the results obtained by pessimism when organized into a system of thought and conduct, as was done by Schopenhauer, but more especially by his far more philosophic and scientific disciple, Von Hartman, the great modern protagonist of the gospel of despair.

Pessimism's fundamental proposition is that this world is bad, very bad. Instead of the product of an eternally active imminent reason, such as pantheism usually postulates, pessimism regards the world as the result of an imminent unreason. Instead of harmony and goodness, there is only conflict and evil. Men, however, seem to think otherwise. Human life is, therefore, only a long succession of illusions, against which educational progress and the increase of culture have been able to achieve but meagre results. And yet, slowly but surely, the shams that delude the race are unmasked and deprived of their power. Once, for example, mankind, in its age of childlike paganism, dreamt of a possible present world brimful of happiness. The historic answer to this anticipation, however, was "Deep weariness and sated lust," with life a veritable hell, during Rome's decadence. Then came the second great illusion imposed on men, this time by the Christian religion, with its anticipations of a transcendent life after death, where happiness, impossible here, will be enjoyed complete.

But this anticipation also rests upon an illusion which is already vanishing into thin air. Already many, philosophers and scientists, for example, have emerged from it, though the greater part of mankind is still in bondage to it. But even many philosophers and scientists, deeming themselves wise, are still living in a fool's paradise. Contrary to their labored demonstrations, happiness is not at all to be had, neither now, nor at any future time, on earth or yet in a heaven above. There is no such thing as positive happiness, but at best only painlessness for mankind. What, then, is the tremendous conclusion? That it is folly to strive for the unattainable. Men ought rather to long for and welcome blank annihilation. The liberty to commit suicide is man's greatest blessing.

Of course, neither individual nor social life can have an absolute value in such a creed. A negation can never be an inspiration. Annihilation is not in any sense an ideal. By recognizing this, Schopenhauer proved himself a far more consistent thinker than his disciple.* The former, logically, prescribed an individual denial of the will to live, while Hartmann, who intended his system for life and action, reaches the conclusion, upon his premises a veritable *reductio ad absurdum*, that man's highest duty is to will to live in order to assist as long as possible in the sublime task of teaching men the pitiful futility of living! And Hartmann really seems to think that this is an adequate basis for rational endeavor and hope. The purest Eudaimonism, with its little empirically acquired knowledge that individual pain may be lessened by voluntary effort, is much to be preferred to such an impotent and hopeless freak of fancy. It is not surprising that men imbued with such a belief should look upon morality as a jest and go their several egotical ways, unmindful altogether of their responsibilities as social integers.

It is, perhaps, worth noting that this modern *soi-disant* philosophic and scientific pessimism followed close upon the heels of the widespread religious scepticism of the eighteenth century.

It is equally worthy of note that the eighteenth century in Europe witnessed the most farreaching and alarming collapse of social institutions of modern times. The prime condition of social good is, it would seem, the practical belief that good really exists. And such a belief is logically and historically dependent upon man's belief in God.

And what is true of man *en masse* is true also of man individually. The godless man is, almost inevitably, the hopeless man. And it is only a step from hopelessness to despair and recklessness. The most dangerous man to-day, socially, is the religionless man, because he is the rudderless man, a derelict upon life's sea. No sufficient sanction can bind him to the performance of a course of duty, more especially when it is against his seeming interest or strong desire. Here and there, indeed, some educated and superior soul may seemingly no longer require the support of religious belief to establish and maintain the true balance of life's relations, but the popular need for it is as great as it ever was. And when we consider the tremendous disintegrating forces, such as perverted sex and acquisitive instincts, that still radiate from millions of personal centers after untold milleniums of socio-religious discipline the conviction is thrust upon us that this need will abide.

Only a few words need, therefore, be added concerning the future of religion. Kidd's position is indubitably the true one when he so stoutly maintains, the rationalistic school to the contrary notwithstanding, that, looking at the totality of modern civilization, there is no tendency whatever visible that religion is about to be superseded. On the contrary, his conclusion, reached, as he assures us, along the lines of Darwinian science, is that "the evolution which is slowly proceeding in human society is not primarily intellectual but religious in character," and that "through the operation of the law of natural selection the race must grow ever more and more religious." And in this conclusion he finds himself in unexpected company. Even Spencer is constrained to

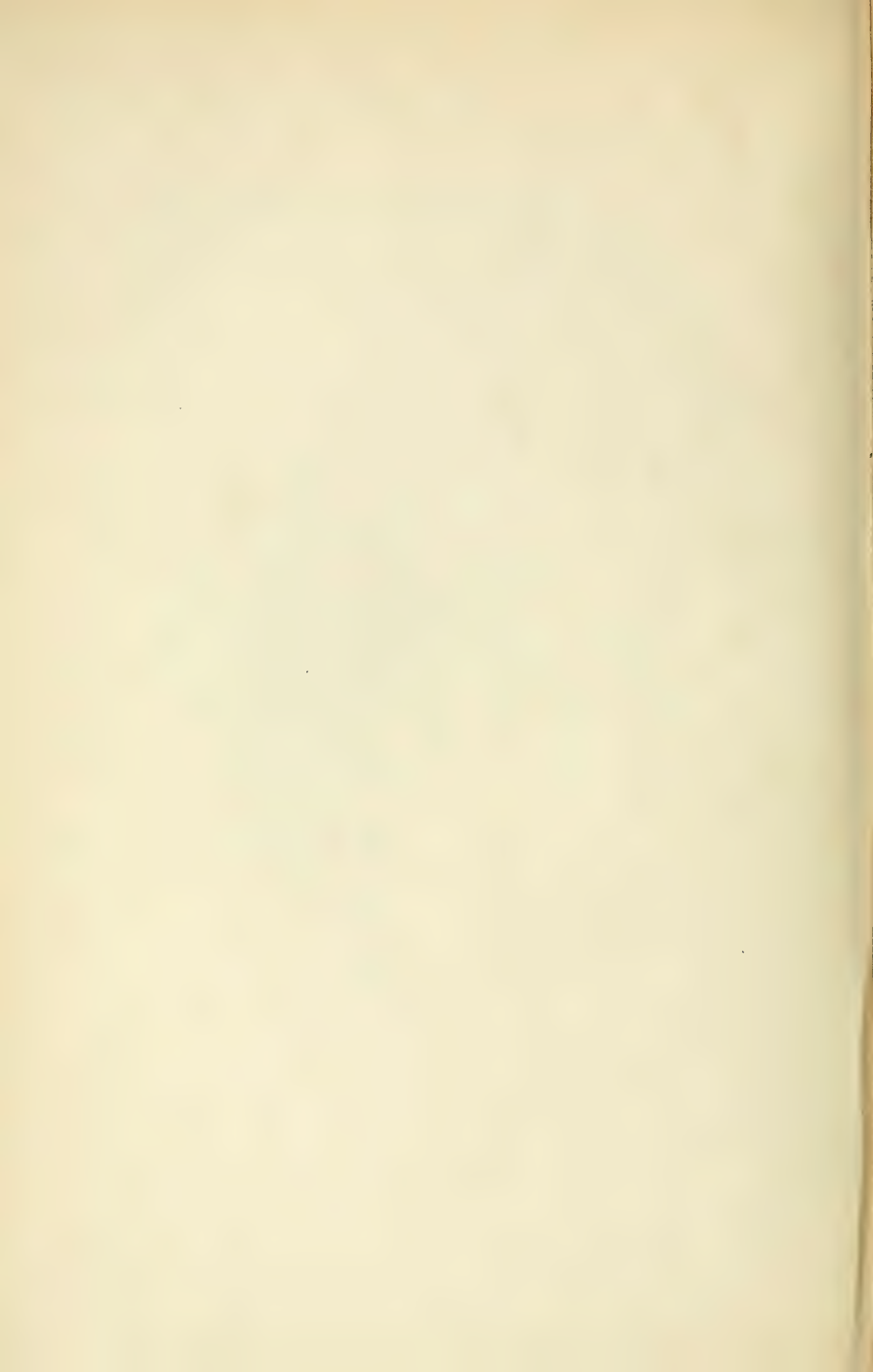
admit that though religion, in the future as in the past, will be subject to change, it will never die. It may be expected that particular systems of religion, having spent themselves upon the social problems of their day, will diminish and disappear, but religion itself will never lose its force. It is as enduring as humanity itself. Indeed, functioning as a force that is both restrictive and propulsive, restrictive of what is bad in human nature and propulsive of what is good, the result must be, necessarily, the ever increasing elimination of irreligious individuals and groups and the gradual but steady evolution of a distinctly religious type of man. To argue the contrary is almost equivalent to saying that mankind must go from good to bad, and from bad to worse.

But, it may be asked, what of the rapid increase of secularism as manifested by the steady appropriation by the state of certain important social functions heretofore exercised by the church alone, such as education? The ever increasing secularization of education, both in this country and Europe, cannot be denied. In the higher branches it is practically complete the world over. This, and the evidently increasing sentiment which is strongly disinclined to be bound by the religious sanctions for such institutions as marriage and "the Lord's Day," are indications that seem to point in a direction opposite to that reached in what has gone before. And religious leaders, especially clergymen, look upon such tendencies with alarm. But their fears are groundless. Conventional churches will, doubtless, be greatly modified. Perhaps they will be supplanted by something wholly different and better fitted to express the religious sentiment of the future. But real religion itself will never die. A state of society in which the supernatural has not been "sensed;" in which, more or less waveringly but nevertheless, a future life was not anticipated; in which prayer was not offered to some deity; has never yet been known to exist. And, as shown in a previous chapter, the very men in whom the modern secular spirit had its springs, and others who have sought most sedulously to foster it, were never themselves able to get

quite away from the religious attitude. Nor is it possible to foresee a time when religion, a reverential attitude toward God, the sense of living forward into another world, will no longer be a force in human society. Hitherto the religious element has been preeminently its saving salt. It cannot be said that thus far, during the temporary and partial subversion of that element by the prevalence of the modern plague of "knowledge," the new "forces" awakened by the historical and scientific spirit have supplied any evidence of ability either to conserve what has been achieved or to elevate individual and social character to still higher altitudes, to carry the world to something better than it has attained to under the tutelage of the religious spirit. Science has promulgated its protest against an artificial theology of the past, and it may be conceded that it has made good its protest. But, on the other hand, what great dynamic truth has it declared in the realm of character, like that, for example, of the Brotherhood of Man under the Fatherhood of God? Is it too much to claim that it was under the inspiration, even if not at the immediate suggestion of this religious doctrine that every great moral and social reform has been carried to a successful issue in the Western world? It would, of course, be rash to say that science has said its last word. Nevertheless, looking back upon the past, and considering what the world would lose with the passing of the religious spirit, it is impossible to look forward very sanguinely to a future under the sway of the scientific spirit alone. The material conveniences and comforts of existence would doubtless continue to improve. But it may also be expected that life itself would become sadder and grayer even than it has been. That there would be less energy and capacity for reform is certain, since men would be deprived of those profounder convictions and deeper enthusiasms which the fervid religious faith of the past alone supplied.

And already there are indications that the great materialistic drift of the past century has run its course. The signs are becoming more abundant that the social mind is awakening to the fatal

futility of the position which has been reached. The profoundly materialistic conception of the nineteenth century on the scientific side, with its inevitable corollary, unuttered, perhaps, but lurking everywhere in men's minds, and secretly controlling them, of "neither justice, nor virtue, nor morality" in connection with "business," but only "utility," and issuing in a gigantic, conscienceless competition for gain, not only by individuals and small groups, but by entire nations—of which the end is not yet, as witness the bitter and bloody and momentous war between Japan and Russia—that conception is being scrutinized, criticized, attacked, along the whole line of its once seemingly impregnable intrenchments. Men have paused to recall that a type of society in which selfishness is the controlling principle has never yet endured, and it requires no prophet's vision to assure them that it never will. And the only true solvent for selfishness is religion. If the moral gangrene of indifference to the other fellow's welfare, now so alarmingly prevalent in this country, is ever to be checked, it must be done through the application to life of the religion which bids us love our neighbor as ourselves.



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II

THE ORIGIN AND EARLY DEVELOPMENT OF THE ENGLISH UNIVERSITIES TO THE CLOSE OF THE THIRTEENTH CENTURY



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THE ORIGIN AND EARLY DEVELOPMENT OF
THE ENGLISH UNIVERSITIES TO THE
CLOSE OF THE THIRTEENTH
CENTURY

A STUDY IN INSTITUTIONAL HISTORY

BY

EARNEST VANCOURT VAUGHN, A. M.
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CONTENTS

INTRODUCTION: THE INTELLECTUAL LIFE OF THE MIDDLE AGES IN RELATION TO THE RISE OF THE UNIVERSITY	1
I. THE ORIGIN OF THE UNIVERSITY OF OXFORD	22
II. THE DEVELOPMENT OF OXFORD IN THE THIRTEENTH CENTURY	41
III. THE RELATIONS BETWEEN THE UNIVERSITY AND THE BOROUGH OF OXFORD	66
IV. THE UNIVERSITY OF OXFORD AND THE CHURCH	87
V. THE UNIVERSITY OF CAMBRIDGE DURING THE THIRTEENTH CENTURY	104
LIST OF WORKS CONSULTED	124
INDEX	129



PREFACE

It is the aim of this study on the origin and early history of Oxford and Cambridge to trace the corporate development of these two English universities during the thirteenth century and to outline the steps by which they gradually approached an independent position in the polity of the Middle Ages. Any attempt to describe the internal life, the organization, or the intellectual activity, of the early medieval universities is only more or less incidental to this main purpose. It is hoped that such a point of view is worth while as illustrating the remarkable tendency towards organization so characteristic of the twelfth and thirteenth centuries. In any case the growth of an authority as distinct in its sphere as was that of Church or State is a development of great interest and of considerable importance as well. By the close of the thirteenth century practically all the essential features of the *Universitas* are clearly revealed, though manifestly it would be presumptuous to attempt to draw very definite conclusions from the survey of such a limited period in the history of two famous and widely influential universities. Perhaps, however, the more brilliant history of a later day will be somewhat clearer and more significant by concentrating attention for a moment upon the real nature of those early influences and movements which have shaped the development and character of all universities since the middle ages.

The author takes this opportunity to express his deep appreciation of the friendly interest and helpful criticism of Professor N. M. Trenholme during the progress of the work upon this little monograph. Originally undertaken at his suggestion, it owes much to his guidance and encouragement, and the obligation to his scholarly criticism should be most generously acknowledged. Whatever of merit may be found in these pages is in considerable degree to be attributed to him.

E. V. V.



INTRODUCTION

THE INTELLECTUAL LIFE OF THE MIDDLE AGES IN RELATION TO THE RISE OF THE UNIVERSITY

The period following the barbarian invasions and the overthrow of Rome was the darkest age in the intellectual history of Europe. The Germanic conquerors were too backward to continue the work of the Romans, and, as a consequence, the Roman imperial and municipal schools were swept away, the knowledge of Greek practically disappeared, and even the Latin language threatened to disappear. This intellectual decline reached its lowest point in the seventh century, though there was not much actual improvement before the eleventh century. Before there could be an intellectual revival in Europe, it was necessary that there should be a fusion in race and in civilization, and especially that the barbarians be brought to a comprehension of the results of Roman civilization. And, in this process of assimilation, the great agent was the Christian Church—a fact which largely explains the religious trend of the thinking mind during the Middle Ages.

When the Roman imperial and municipal schools disappeared, it was the needs of the Church that kept in existence a certain amount of learning. Some secular education was considered necessary in ecclesiastical training; and so to meet this demand schools arose in connection with the monasteries and cathedrals. In these schools the course of study was somewhat narrow, as it included only what was considered essential for the priest and the monk, but it should be remembered that in them alone were educational and intellectual ideals maintained during the confusion of the earlier Middle Ages. They attained high influence and

reputation and became the basis for the rapid advance of the twelfth and thirteenth centuries.¹

The Carolingian renaissance marked the first important step in advance. This renewal of intellectual activity is explained by the political consolidation of western Europe and by the personal influence and aims of Charles the Great. A revival of education was an important part of Charlemagne's far-reaching schemes of ecclesiastical reform. It was his desire to make the Franks capable of appreciating their inheritance from Rome and, to that end, he called a number of foreign scholars to his court and set about a thorough reorganization of the Frankish schools. The chief of these foreigners was the famous English scholar Alcuin, one of the leaders of the Northumbrian revival of education and letters in England, who was given the task of organizing and diffusing learning throughout the Frankish dominions. In 782 he was made master of the palace school; and for the next eight years he labored to carry out his educational projects, first in the palace school and later throughout the kingdom.²

Under Alcuin's influence Charles issued in 787 his famous capitulary in regard to education. This capitulary shows several very important ideas: firstly, the head of the State undertakes to compel a general attention to education; secondly, the principle is laid down that without the study and teaching of secular subjects the servants of the Church would be unable to fulfil their proper functions and would be hampered in understanding the Scriptures; and, finally, it is desired to raise up a body of teachers willing and able to carry on the work of education, thus giving teaching a definite standing as one of the professions.³ The

¹ Rashdall, *The universities of Europe in the middle ages*, I. 26, 27.

² Mullinger, *The schools of Charles the Great*, chs. i, ii; West, *Alcuin*, chs. iii, v; Eginhard, *Life of Charlemagne*, 61, 62.

³ Mullinger, *op. cit.*, 97-99, gives a translation of this document see also Pennsylvania translations and reprints, VI. no. 5, 12-14.

importance of such ideas is readily seen. Between the years 787 and 802 there followed a series of capitularies and letters of instruction designed to reënforce and extend these essential principles of Charlemagne's educational system.

The results of this activity were important, even though the permanent effects fell far short of what the revival seemed to promise. A system of schools was built up with the palace school at its head. In this school were gathered together the members of the royal family and the chief men of the court, and from it the impulse of this intellectual activity spread to other schools that had been established or revived through the influence of Charles the Great and Alcuin. Because of this impulse a few schools continued to give a more thorough instruction in the medieval curriculum, as was the case at Paris, Orleans, Rheims, Chartres, St. Martin of Tours, and elsewhere.¹

This Carolingian revival would certainly have proved somewhat permanent if only social and political conditions had continued favorable. But the succeeding age was one of great confusion, largely due to Norman, Saracen, and Danish incursions, and in the two centuries after Charles the Great we do not find any great degree of advancement in learning. However, here and there some improvement was made. Thus in the latter half of the ninth century a controversy over the doctrine of transubstantiation arose at the court of Charles the Bald, in which all the leaders of West Frankish learning took part. Another doctrinal controversy, waged over the question of predestination, was carried on by Gottschalk, Scotus Erigena, and other writers of the time.²

Somewhat later England experienced a revival of intellectual activity through the efforts of Alfred the Great. Alfred continued the work of Charles the Great by founding a palace school at

¹ Rashdall, I. 30.

² Emerton, *Mediaeval Europe*, 440-442.

Winchester and by calling in foreign scholars. But the best work was done by the king himself, as scholar, as translator, and as writer of English prose.¹ The influence of this work, too, was short-lived, the decline being due to the religious and social condition in England and to the second Danish invasion. Saxony, also, in the tenth century became a center of education through the development of the Carolingian schools in that country. Encouraged by the Ottos, the monasteries of Hersfeld, Corvey, and Hildersheim, for men, Quedlinburg and Gandersheim for women, became seats of classical activity and culture.²

The strictly religious tendency soon began to rival this more practical spirit, and learning passed more completely under the control of the monasteries. The monks regarded the early Church writers as the source of all that was worth knowing. Classical learning was not to be enjoyed; it was to be carefully used only as an aid to the work of the Church. We find the expression of this idea in the Clugniac order, the ideal of which was the ascetic life. The opposition of Clugny to the study of the classics partly explains the decline of learning in the course of the tenth century.

In the eleventh century there is to be seen a great change gradually taking place in Europe. This change revealed itself in many ways—in reform and the founding of new monastic orders, in the revival of architecture seen in the building of cathedrals, in the crowded schools and the new passion for inquiry, and in the rise of scholasticism and of the universities. The culmination of this movement was the important twelfth century renaissance, the creative age of scholastic philosophy; while the thirteenth century saw the intellectual life of the Middle Ages at its height.

There are several causes for this rapid advance after the

¹ Alfred the great, 149-205.

² Emerton, 445.

year 1000. One of these was the restoration of political, ecclesiastical, and social order, attained primarily through the conversion of the Scandinavian pirates into Christian and civilized Normans, through the enlightened rule of the Ottos and their regeneration of the Papacy, and through the beginnings of civic life in Italy. The greater order and security thus obtained gave one of the most indispensable conditions necessary for intellectual activity.

Another influence is to be found in the curriculum of the preceding age. There was no sudden movement or discovery; the revival of the eleventh and twelfth centuries grew out of the old conditions, and it may not be too much to say that its direction was completely determined by those conditions, as, for instance, the revival of logic at Paris, of law at Bologna, and of medicine at Salerno. It is necessary, then, to notice more closely the traditional education inherited from the past. As has already been indicated, the object of this education was ecclesiastical, that is, to expound the scriptures and the writings of the church fathers. For the proper understanding of these a certain amount of secular education was considered necessary, represented by the elementary trivium, grammar, rhetoric, and logic, and by the more advanced quadrivium, music, arithmetic, geometry and astronomy. The content of the quadrivium was very meager before the twelfth century renaissance, and so the secular education of the "dark ages" was in reality the trivium.

Before the time of Charles the Great the secular culture that had survived was based upon the Latin classics and sometimes upon the Roman law, but at this time the heart and center of secular education in Northern Europe had become dialectics or logic. This was the one study of the past that the student was encouraged to make his own, not only because it could not be regarded as pagan in its influence but also because it was thought essential for the right comprehension and teaching of Christian truth.

And besides, the material at his disposal was much richer than in most other branches of secular knowledge. In the early middle ages, as well as later, Aristotle was supreme. Yet in the formation of the scholastic philosophy the influence of Plato upon medieval thought was of considerable importance, the different views of these two philosophers regarding the nature of "ideas" furnishing the great central subject—and for a time the only subject—of medieval speculation and controversy.¹

Before entering upon a history of these scholastic arguments, two other causes that help to explain the twelfth century renaissance will be noticed namely the Arabian civilization and the crusades. During the ninth, tenth, and eleventh centuries a brilliant civilization had been developed among the Arabs. After a wonderful career of conquest, the Mohammedans turned their spiritual force in fresh directions, and as a result jurisprudence, science, art, and philosophy rose and flourished at a time when Europe was in comparative darkness. Every mosque had its school, academies and universities were instituted, and great libraries were collected at Bagdad, Alexandria, Cairo, Cordova, and other centers of culture. The Arabs were strongly attracted by the survival of Greek learning; translations from the Greek were numerous, and Aristotle and Euclid were the starting points of this new intellectual activity, except in the fields of poetry and jurisprudence. Christian students were welcomed to their schools, and these on their return home, disseminated a considerable part of the Arabian learning. Spain especially was the country through which this learning penetrated into Europe, the university at Cordova being famous.²

¹ Rashdall, I. 37, 38; Sandys, *History of classical scholarship*, 505, 506.

² Draper, *History of the intellectual development of Europe*, II. 30-53; Laurie, *The rise and early constitution of universities*, 88-90; Rashdall, I. 77-82, II. 115-118, 780-785.

Of considerable importance in the second place were the crusades, which undoubtedly had their part in shaping the changes in thought and life that characterize the Europe of the twelfth century. The movement was a sign of the reawakened energy of Europe and at the same time an important cause of increased intellectual activity and change. Those taking part were given a view of distant lands, were brought in contact with new peoples and new ideas and were imbued with a common enthusiasm and with common interests and ideas. Intellectual quickening and a general enrichment of education and culture followed, broader and more human notions of the world were awakened. The deeds of the crusaders furnished new and rich material for historical literature and did much to stimulate the development of romantic literature. The period following the crusades is marked by a great increase in the number of books, by rapid advancement in the studies of law, medicine and theology, by the scholastic philosophy, and by the rise of the universities. Of these the two latter are the most important in the intellectual history of the Middle Ages.

In the history of scholasticism there are two fairly distinct periods. The first of these periods extended from the beginning of the movement to the latter part of the twelfth century and embraced the work of Roscellin, Anselm, William of Champeaux, and Abelard. The second period extended from the beginning of the thirteenth century to the renaissance; it is the period of the culmination of scholastic thought and its consolidation into a system by Albertus Magnus, Thomas Aquinas, and Duns Scotus, to be followed by a decline in the fourteenth and fifteenth centuries.¹ It was during the first of these periods that the universities arose as the great intellectual achievement of the Middle Ages. Consequently it is only by a study of the growth and influence of the scholastic philosophy that many questions connected

¹ *Encyclopaedia britannica*, Scholasticism, 417.

with the origin and development of the early European universities can be satisfactorily explained.

A revival of learning and speculation had marked the rise of the Carolingian schools and it is from these schools that the term "scholasticism" is derived. Any teacher was originally a "doctor scholasticus" but the term soon came to be applied to those especially occupied with logic and philosophy. The two influences that shaped this scholastic activity were the traditions of ancient logic as preserved in the early medieval curriculum and the system of Christian theology; fully developed scholasticism is in reality little more than the combination of these influences into an intellectual system with rather well-defined characteristics. The intellectual activity of the schoolmen, however, was largely that of interpretation rather than of original investigation, as they never wandered far from their inherited materials and their works were apt to take the form of commentaries upon Aristotle or the Church fathers.¹ The usual way of expressing this is to say that reason was subject to authority, or, that their conclusions were generally predetermined. Reason, subordinate at first, in the thirteenth century entered into an intimate alliance with faith, but the two authorities were not thoroughly reconciled, and so there soon came a period of separation and of scholastic decay.

And yet, from one point of view, it is unjust to regard scholasticism as a barren and unprogressive system of thought. Under its influence the universities and schools of the Middle Ages trained the intellect of Europe for the work of the modern world. In fact scholasticism stood for the appreciation of subtle logic and metaphysical distinctions and a recognition of the rights of reason, even though still overshadowed by authority. It may be regarded as a stage in the growth and gradual emancipation of reason, a process which was practically completed at the time of the renaissance and the reformation.²

¹ Bacon, *The advancement of learning*, IV. 5.

² Adams, *Civilization during the middle ages*, 368, 369, note.

The question as to the nature of universals formed the central theme in the scholastic debates. The nominalists claimed that universals exist only as conceptions in our minds, while the realists asserted that they have a substantial existence of their own. But the further question arose, Do they have an existence apart from sensible phenomena, or do they exist only in and with the objects of sense as their essence? These differences were embodied in the three medieval formulae, *universalia post rem*, *universalia ante rem*, and *universalia in re*. The question whether the only real things were the general or the particular had vital importance in the Middle Ages. For instance, suppose these views are applied to the Church; the realist would say that the Church is a sacred entity, the nominalist would claim that the Church is a mere name by which all individual churches are conveniently grouped. As the same process applies to all other great medieval conceptions, as state, guild, or Trinity, it is seen at once that the controversy struck at the root of medieval thought and institutions.¹

Though this characteristic question became prominent in the ninth century, the dispute did not become an absorbing one until the eleventh and twelfth centuries; when intellectual activity was aroused it became a very natural impulse to investigate and to interpret, to attack or to defend, what was found in the Scriptures, in the Church Fathers, or in the doctrinal systems of the time. This combination of theology and logic is the distinctive mark of scholasticism. At first the results of this combination were decidedly heterodox, and the excitement that followed lifted the scholastic disputations into their central position in the Middle Ages.

About 1051 Berengar of Tours attacked the doctrine of transubstantiation by denying the possibility of a change of substance in the bread and wine without some corresponding change in its accidents. The real founder of nominalism, however, was

¹ Emerton, 449-451.

Roscellin, a teacher at Paris. He refused to recognize the reality of anything but the individual; to him general terms were little more than mere names used to sum up the knowledge gained from individuals. Roscellin stated his position boldly, and, like most innovators, he probably went too far in his nominalism. Possibly he did not intend to go so far as to make universality merely subjective, but his doctrine of the Trinity shows that he was prepared to carry out his individualism. If we are not ready to say that the three Persons are One, then, he says, we ought to speak of them as three Gods.¹ His extreme views probably brought about the strong expression of realism found in the theories of Anselm and William of Champeaux. At any rate the discussion was now carried on with a full understanding of the issues at stake and, naturally, realism became for several centuries the orthodox philosophical creed.

From Roscellin the speculative impulse was communicated to Peter Abelard, in whose hands the scholastic treatment of theology attained its full development. As a pupil both of Roscellin and of William of Champeaux, Abelard had become familiar with both nominalism and realism, and this probably explains the fact that he mapped out for himself something of an intermediate position on the question of universals. This question, however, was probably not one of supreme interest to him as he belonged more especially to the classical phase of the intellectual revival.² He was an unrivaled dialectician, who, while still a student at Paris, gained considerable reputation by defeating his master, William of Champeaux, in disputation. He entered into the scholastic movement with such audacity, enthusiasm, and ability, that he soon became the central figure in the discussions of the time. As so many of the intellectual forces at work in the Europe of the twelfth century seem to meet in him and receive from him their highest

¹ Emerton, 450, 451.

² Rashdall, I. 62, 63.

expression, it is necessary to notice his career more closely and in some detail.

The biography of Abelard is a remarkable and fascinating one. Born at Pallet in Brittany in 1079, he left home at the age of fifteen or sixteen in search of knowledge, wandering from place to place, "wherever dialectics flourished." Encouraged by his brilliant victory over William of Champeaux, he soon established himself as a master, first, at Melun in 1102, and, later, at Corbeil, nearer Paris. He soon drifted back to Paris, however, and, after a period of bitter controversy, he succeeded in making himself supreme in the intellectual capital of Europe. Then there came, in 1118, the scandal of his liaison with Héloïse, which brought about his sudden downfall. From this time on to his death there is little more than blundering or unmerited persecution in every attempt that he made to regain his position and influence. Though he lectured again at Paris and elsewhere with some success, his efforts to exalt reason and to bring about reform always resulted in relentless persecution from his enemies, especially from Bernard of Clairvaux, and as a consequence he was twice condemned for heresy, at Soissons in 1121 and at Sens in 1141. During the last year of his life he fervently sought to find peace in the strict discipline and the religious observances of the famous monastery of Clugny, and it was there that he died, in April, 1142, at the age of sixty-two.¹

This persecution came to Abelard not so much for his heresy as for the whole tone, spirit, and method of his teaching. He was, as has been intimated, the fullest and best exponent of that power of thought which Roscellin had awakened in the schools of Europe by his attack on the established beliefs and modes of thought. He admirably sums up this new spirit; he doubted, he investigated, and he dared to apply the test of reason to all the scholastic prob-

¹ McCabe, Peter Abélard; Compayré, Abelard.

lems of the time.¹ His great success was due to various causes, but chiefly to the possession of a mind of remarkable clearness and penetration and to an extraordinary ability in imparting knowledge.

Abelard lived at a time when Paris was advancing very rapidly as a commercial and political center. This growing importance, together with the popularity of the lectures of William of Champeaux, had given considerable fame to its schools even before the coming of Abelard upon the scene. And now his renown drew crowds of students from different parts of Europe at the same time that his enthusiasm, his oratory, and his attractive manner, as well as the novelty of the content of his lectures, tended to popularize learning.² With him the scholastic philosophy began clearly to identify itself with the rise of the universities. Though the earliest of these universities did not come into existence for about a generation after Abelard, still he is rightly given the first place in the history of their origin and the causes of their rise, and he has been called the "forerunner" and the "real founder" of the university of Paris. He aided in its development by attracting foreigners to Paris, by popularizing the studies and the methods of the education of the time, and, to a less degree, by raising the level of instruction.³

Scholasticism always depended on intellectual processes for its results. But the rival medieval system, aiming at precisely the same end, reached its conclusions in quite a different way. Mysticism felt no need to confirm the body of faith handed down by the Church by any intellectual process whatever; the truth was to be gained, not through reason but through contemplation—the

¹ Rashdall, I. 41-62. Draper, *Intellectual development of Europe*, II. 11, gives an interesting extract from the report of the council of Sens upon Abelard's methods.

² McCabe, *Abélard*, 82, 83; *Compayré, Abelard*, 18, 19.

³ *Ibid.*, 22.

devout soul looking into itself for a response to the formal statement of the creeds.¹ Naturally then, mysticism was opposed to the rationalistic tendencies of scholasticism. For instance, Abelard was called to account for his heresies by that great champion of orthodoxy in France, Bernard of Clairvaux. Bernard, who had fallen under ascetic Clugniac influences, had founded a monastery at Clairvaux, where he soon gathered around him a body of men specially fitted for his purpose, namely, the regeneration of society through the example of the lives of devout men.

When the trend of scholasticism revealed itself in Abelard, Bernard entered into an intellectual crusade against it. And the defeat of Abelard at the council of Sens proved that scholasticism was not strong enough to withstand the general drift of medieval ideas. This council marks the triumph of the conservative element in education; nominalism received a severe blow, and scholasticism more definitely entered the service of the Church.² Yet there continued a current of independent thought represented by Roger Bacon in the thirteenth century and by William of Occam and the revival of nominalism in the fourteenth century.

With the decline of the speculative impulse in the first half of the twelfth century, the first period of scholasticism was at an end. Significant of this decline is the fact that John of Salisbury, the ablest man of the latter part of the century, was not so much a philosopher or theologian as he was the historian of the opinions and of the schools of his time. This first period was followed by an interval of about fifty years that was marked by no noteworthy philosophical activity. But it was in this interval that the great results of the creative period of scholasticism became apparent, and gradually the universities of Paris, Bologna, and Oxford, were

¹Emerton, 56-58.

²Fisher, *History of the christian church*, 203, 204, 213, 214; Emerton, 458-461.

definitely established and took their place amongst the intellectual forces of Europe.

It is impossible to be definite or exact in giving the history of the rise and early development of the universities, as they were not "founded" in the strictest sense of that word, but were the result of a number of causes at work from the eleventh to the thirteenth century. The old monastic and cathedral schools are generally recognized as the basis out of which they arose,¹ modified by all the influences that have been considered in connection with the intellectual revival, such as the Saracenic civilization, the crusades, and the new methods and activity of the schoolmen, which necessarily had more or less influence on their origin and development as great centers of education.

Besides these general influences, there were a number of special causes that had a more direct bearing on the university movement. One of these causes was the specialization of learning at this time. There had gradually grown up a great mass of traditional learning on the subjects of most interest to man and most essential to his welfare; and, in addition, new interests and new materials for study had been revealed by the revival of intellectual life. The result was a tendency to specialize in the studies of law, medicine, and theology, and this tendency had the effect of drawing thousands of students to certain noted centers of instruction that emphasized these subjects. This seems to be one of the chief explanations for the rise of the higher schools.²

Along with this tendency to specialization came a demand for secular education. This demand is to be explained by the growth of an anti-monastic feeling and by the needs of the rising civic communes of Italy which in the eleventh century began to obtain

¹ There are only two exceptions in the thirteenth century to the rule of a long previous preparation—Palencia (1212-1214) and Naples (1224). Compayré, Abelard, 25-29.

² Ibid., 29, 30; Laurie, *Rise of universities*, 94-96.

charters and privileges.¹ The idea arose that the schools should be open to all without restriction, as opposed to the more restricted ecclesiastical schools, and that education should be more secular in its character. As a consequence, schools were established in many of the important commercial centers which were probably not under the control of the Church nor always taught by priests.²

Of even more importance was the growing tendency towards organization, which was so characteristic of the Middle Ages. It was an era of municipal corporations and of various kinds of guilds for the purpose of protection, self-government, or trade. The trade guilds, for example, were voluntary associations for the attainment, in varying degree, of each of these three general purposes. The university, also, is a natural result of this movement towards free association. When large numbers of masters and students were drawn to some important center of education, they soon began to feel the need of protection and of organization, and, following the example of the trade guilds, they rapidly developed the famous organization of the "Nations." Indeed the word "universitas" originally meant the same as that of guild or corporation—the association of men for some common purpose. There were universities of citizens, or of tailors, as well as universities of scholars.³

The term "universitas" was not the common medieval designation for one of the higher schools of learning. When used at all some descriptive word had to be added to distinguish it from other universities, or corporations, as, for example, *universitas magistrorum* or *universitas studiorum*. The term generally used, at least during the thirteenth century, was that of "*studium generale*." A "*studium generale*" had certain distinctive characteristics,

¹ Rashdall, I. 98, 99; Laurie, loc. cit.

² Examples of this are Bologna, Milan, Brescia, and Florence, in Italy; and later, Lubeck, Hamburg, Leipsic, and others, in Germany.

³ Laurie, *Rise of universities*, 177-179; Emerton, 466, 467.

the most important of which were that it should be a specialized school and open to all without any restriction. It was also self-governing and enjoyed the privileges of promotion and of unrestricted migration. It should further be kept in mind that there were no buildings nor laboratories, almost nothing in fact that is now associated with the name of university, but that each student sought the teacher he wished and attended his lectures. Such was the character of the early medieval university.

The three earliest of these universities were at Salerno, at Bologna, and at Paris, and arose in answer to the demand for a more specialized and practical education than was to be found in the traditional curriculum of the cathedral and monastic schools. First in point of time was the revival of the study of medicine at Salerno in southern Italy. Little is known of the early history of medicine at Salerno, or of the origin and development there of a purely medical school. Such a school probably existed as early as the ninth century, but it did not gain a European celebrity before the middle of the eleventh century—about half a century before the revival of Roman law at Bologna or the rise of the scholastic fame of Paris. Its history is of very little importance, however, and in 1258 it became merely the medical department of the university of Naples. During the later thirteenth and early fourteenth centuries it still continued to decline, due primarily to the rise of other centers of medical instruction and to the growth of an independent Arabic system of medicine.¹

The university of Bologna, too, arose in answer to the call for instruction beyond the range of the Benedictine schools. And again, the character of the new instruction was determined by peculiar local conditions in Italy. Education had never been as completely extinguished in Italy as it had been north of the Alps, and, besides,

¹ Rashdall, I. 77-85. For the contrary view, upholding strong Saracenic influence on the university movement, see Laurie, *Rise of universities*, 99, 100, and also Edinburgh review, CLXXXIV, 97-102.

there was a great difference in the subject matter dealt with in their respective schools. While logic and theology had absorbed most of the intellectual energy of the North, grammar and rhetoric had been emphasized in the South, and on their practical side as well as on their speculative side. It is also noteworthy that in Italy, and especially in Lombardy, the traditions and the study of the Roman law had been kept up throughout the earlier medieval period. A revival of legal science, then, was a natural result of the educational traditions that existed in the northern part of Italy at the time of the twelfth century renaissance.¹ This tendency in education was further quickened and hastened by the growth of a great number of municipalities with an active commercial and political life which created a demand for the practical science of law. Is it not significant that such conditions gave rise to that most democratic of institutions—a university of students?

About 1113 Irnerius began at Bologna his lectures on the civil law.² For a time this instruction was looked upon with distrust because of its secular and imperial character, but this feeling soon passed away as the Church began to recognize a strong ally in the Roman law. A body of canon law was soon developed, and from the time of Irnerius to the close of the thirteenth century Bologna stood forth as the center of the study of both civil and canon law.

As crowds flocked to Bologna, the students of the various countries represented there organized themselves into "universities," or guilds, for purposes of protection in a foreign country. Through such combinations, strengthened by the privileges granted to them by Frederick Barbarossa, the students gained power and superiority over the masters, who, in turn, had to form guilds in their own defense. It has been estimated that in the year 1200 there were about ten thousand students at Bologna,³ organized into

¹ Rashdall, I. 91-99.

² *Ibid.*, I. 99-127.

³ This is probably an exaggeration. *Ibid.*, II. 581-590.

a considerable number of confederations of the different nations, each presided over by a rector and subdivided into consiliariae. By the middle of the thirteenth century the various confederations were blended either into the "Ultramontani" or the "Citramontani," and much later these in turn were united under one rector. About 1200, also, there were organized the two faculties of medicine, and philosophy or arts. Colleges existed early and were designed for needy non-resident students; but they did not become well organized before the fourteenth century.¹

During the eleventh century, the study of logic had received a great impetus in northern Europe and especially at Paris. So when, in the first decade of the twelfth century, William of Champeaux opened a school in Paris for the study of dialectics, his teaching met with considerable success. But it was the methods and the popularity of his famous pupil Abelard that really prepared the way for the rise of the university by bringing together a great crowd of students and by raising the Parisian schools to a pre-eminent position. Out of these conditions the university of Paris soon developed. It seems that at first the teachers lived in separate houses, and that it was only by degrees that they formed a society or guild of masters with the privilege of admitting new members. This community of masters had probably developed into a real university by 1170, though its organization at that time must have been inchoate and rudimentary.² Its first legal recog-

¹ *Encyclopaedia britannica*, Universities, 833, 834; Rashdall, I. 178-253.

² The first trace is about 1170. This evidence, the only evidence before the thirteenth century for a guild of masters, is based on a passage in Matthew Paris' *Life of Johannes de Cella*. Rashdall, I. 293; *Chronica monasterii S. Albani*, *Gesta abbatum monasterii Sancti Albani* (Rolls series),* I. 217.

* Works belonging to the Rolls series will be indicated by (R. S.), the abbreviation used for

RERUM BRITANNICARUM medii aevi scriptores, or chronicles and memorials of Great Britain and Ireland during the middle ages. Published under the direction of the master of the rolls. London, 1858, etc.

niton as a corporation was that by Pope Innocent III, about 1211. In 1231 the right of the several faculties to regulate and modify the constitution of the entire university was fully recognized by Pope Gregory IX. The university of Paris soon became the Transalpine center of orthodox theological teaching.

There is reason for believing that Paris availed itself of many precedents established by the earlier code of Bologna, and that its rectorship, praetorships, and organization of the four "nations" were all borrowed from the latter school.¹ The four nations, which included both masters and students, were the French nation, the Picard nation, the Norman nation, and the English nation, which embraced the English, Irish, Scotch, and Germans. These nations were in existence before 1219, and at first all of them belonged to the inferior faculty of arts. There were three superior faculties, theology, canon law, and medicine. There was a dean at the head of each of the faculties, and a proctor at the head of each of the nations; while the rector, at first at the head of the faculty of arts, in the course of time became the head of the university, through incorporation under him, first, of the students of canon law and medicine and, later, of the theologians. Each of the nations and each of the faculties had in a great measure the power of self-government. The rector presided over congregations of the faculty of arts and also over all general congregations of the whole academic community. In the former the vote was by nations, in the latter it was by faculties and nations. The right of attendance and of voting belonged only to the masters' actually engaged in teaching.²

The universities of Paris and Bologna, together with the English university of Oxford, became the greatest and most influ-

¹ The university of students at Bologna, though perhaps later than the Parisian society of masters, probably completed its organization earlier. Rashdall, I. 20; *Encyclopaedia britannica*, Universities, 835.

² *Ibid.*, 835; Rashdall, I. v.

ential universities of the Middle Ages. Those at Paris and Bologna were the two archetypal or primary universities—Paris being the model for the universities of masters and Bologna for the universities of students. Every later university in its developed form is a more or less close imitation of one or the other of these two types.¹ Oxford, also, exerted considerable influence upon the university movement, but, though it probably had an independent origin, it seems to have closely followed Paris in its constitutional development and so can not be said to represent a distinct or primary type.

After the way had once been prepared by the founding of these primary or archetypal universities, the founding of others became largely a question of imitation. During the thirteenth century the universities multiplied very rapidly, largely through the exercise of the privilege of migration, though some, as for instance, the university of Naples, were founded in a more formal way.² This privilege of migration is an interesting one as it gives such a clear conception of the real nature of a medieval university. Briefly stated, it was the right gained and at length well recognized that students, or masters, or both, might leave a university town in a body, if circumstances seemed to justify it, and establish themselves in some other center. The fact that the colleges had not yet arisen made such a migration easy, and consequently this danger was a continual guarantee of good behavior on the part of the town towards the masters and scholars. As the number of universities grew, the practice of asking for a formal charter from the Pope or the Emperor began, and, later, such a grant was considered of great importance. In the twelfth century there was only one official institution, namely, Bologna; but in the thirteenth century there were nineteen or twenty, most of them founded between the years 1200 and 1250.³

¹ Rashdall, I. 19; Compayré, Abelard, 61-66.

² For a chronological list of the early universities, with dates and methods of foundation, see *Ibid.*, 50, 51.

³ *Ibid.*, 35-45.

With this definite establishment of a new educational system and its rapid spread throughout western Europe, the movement becomes of much less significance as an explanation of similar developments in England, and, consequently, later phases of its history lie without the scope of this introduction.

CHAPTER I

THE ORIGIN OF THE UNIVERSITY OF OXFORD

From the general survey in the introduction it is seen that the universities of Europe came into existence after a long period of preparation and in answer to the needs of a new age. It is also seen that much obscurity surrounds their origin and early development, but that the movement when once begun became a general one throughout western Europe. It is now the purpose in this and the following chapters to study more closely this university movement of the thirteenth century as it is revealed in the rise and development of the early English universities. In the early stages of their growth the universities of England were closely connected with the movement on the Continent, and in England there are found the same obscurities and the same difficulties that surround the question of the origin of Paris and Bologna. Indeed, the question is rendered even more perplexing on account of the claims and arguments of the champions of the two great rival universities. It is only in the light, therefore, of the general European movement in education that a satisfactory explanation of the early stages in the growth of Oxford and Cambridge and their development into important studia generalia can be given.

In the study of these two English universities, however, much will probably be gained in clearness and definiteness of statement if they are considered separately. Oxford was not only the earliest in point of time but until the end of the Middle Ages it almost completely overshadowed the less favored university of Cambridge. It follows naturally from this that the material for a history of the universities in the thirteenth century relates mainly to the university of Oxford,¹ and, as a consequence, it is in a large measure

¹ The rarity of the allusions to Cambridge and its affairs that we find in the pages of historians is surprising—perhaps once for every ten or twenty times that the name of Oxford occurs in the chroniclers. Rashdall, II. 557.

necessary to depend upon a detailed treatment of the history of Oxford to explain what was taking place at Cambridge during the same period.¹

It is admitted to-day that very little is known with certainty in regard to the precise origin and early stages in the growth of the university at Oxford. The great age formerly ascribed to this university was a result of the disputes for antiquity and precedence which began in the sixteenth century, and which have continued almost if not quite down to the present time.² While the myths that arose are of interest, especially if the history of their formation and the influence that they once exerted be traced, yet they may be dismissed briefly as being of no real value in the history of the university. The most important of these stories—the one that derived the university from Alfred the Great—has been shown to rest on a sixteenth century interpolation in Asser's *Life of Alfred*.³ The uncritical character of many of these stories is well illustrated by the claim of some extreme Oxford partisans that the university was actually founded by several Greek philosophers who accompanied Brutus and his warlike Trojans when they came to Britain.⁴

¹ Mullinger depends largely on materials relating primarily to Oxford, as, for instance, *History of the university of Cambridge*, ch. ii.

² However, the beginning of such claims can be traced to the late thirteenth and early fourteenth centuries. In 1296 Sutton, bishop of Lincoln, wrote to Innocent III that "the university is by many believed to be the oldest of the seats of learning now flourishing among the Latins." In 1322 Oxford graduates declared that Alcuin, the reputed founder of the university of Paris, was educated at Oxford. A monastic record of the fourteenth century gives the teaching staff in Alfred's time, *Liber monasterii de Hyda*, (R. S.), 41. For these and other claims see Lyte, *A history of the university of Oxford*, ch. ix.

³ Fuller, *The church history of Britain*, I. 305-314, gives the story as accepted in the sixteenth century. The history of the interpolation is explained, Lyte, 239-241; Rashdall, II. 322, 323. The vitality of the story is shown by the fact that in 1882 University College celebrated the one thousandth anniversary of its foundation by King Alfred.

⁴ *Munimenta academica*, (R. S.), II. 367, 368.

A study of the borough of Oxford in the preacademic period shows the real character of these myths and at the same time prepares for the appreciation of the value of the different theories that attempt to explain the actual origin of the university. The first reference to Oxford is probably contained in the legend of the founding of the nunnery of St. Frideswide about the year 727 by Prince Didanus.¹ But the first trustworthy evidence for the existence of the town dates from 912 A. D. In that year, it is said, Edward the Elder "took possession of London and Oxford and all the lands that owed obedience thereto."² During the Danish wars, the town of Oxford suffered severely, and the nunnery of St. Frideswide was partly destroyed and for a time was turned over to the secular canons.³ It was probably under the shadow of this foundation of St. Frideswide that the borough gradually developed. Later, in the eleventh century, Oxford was a place of considerable importance both from a strategic point of view and as a meeting place for great assemblies.⁴ It seems to have suffered considerably at the time of the Norman conquest, but if so it soon recovered and began to increase in prosperity.⁵ When the Norman baron Robert d'Oili was made royal constable he strengthened the fortifications and built the Church of St. George-within-the-Castle, and a later member of the family is remembered as the founder of Oseney Abbey.⁶ Though it had been for some time an important political center, Oxford did not become known as a

¹ *Acta sanctorum*, Octobris, VIII. 537; Norgate, *England under the angevin kings*, I. 43.

² *Anglo-Saxon chronicle*, (R. S.), I. 186.

³ *Ibid.*, I. 262; Dugdale, *Monasticon anglicanum*, II. 134.

⁴ *Anglo-Saxon chronicle*, (R. S.), I. 274, 384.

⁵ Freeman, *Norman conquest*, IV. 188, says the evidence for a destructive siege is very weak. On the other hand see the definite statement from *Domesday Book* regarding the number of houses destroyed. Ballard, *Domesday boroughs*, 67.

⁶ *Annales monastici*, (R. S.), IV. 9, 10, 19; Dugdale, VI. 251; Green, *Stray studies*, 295-298.

seat of learning until the twelfth century.¹ Before this there is no evidence that the schools of Oxford were anything more than the ordinary schools of the Benedictine type, but with the lectures of Robert Pullen in 1133 and possibly those of the Roman jurist Vacarius in 1149 a new age begins in educational affairs.

What is the explanation of this increasing importance of Oxford previous to the university era? Ecclesiastically it was of minor importance, so that its growth cannot be explained by referring to the splendor and influence of Church or monastic foundations, as is so often the case elsewhere. The question as to the fame and importance of the schools that arose in the cloisters of its monastic establishments is one that will be taken up for consideration a little later. It seems more probable, however, that the growing importance of Oxford is to be explained largely by its situation and its commercial activity; among its advantages may be mentioned the cheapness and abundance of foodstuffs, its central location and facility of access, and its position on the Thames river.² After the beginning of the twelfth century this commercial activity was especially marked and resulted in a more rapid development of the town.³ It may safely be said that, by the time of the rise of the university, Oxford occupied a place in the first rank of English boroughs, and that it was a suitable place for the gathering together of a great body of students.⁴

This brings up the consideration of probably the most difficult question that shall have to be discussed, namely, when and in what way did the university arise out of the conditions that have just

¹ Freeman, *Norman conquest*, V. 319.

² Rashdall, II. 324-326. In the twelfth century Jewries were established in Oxford. On their importance see Green, *Stray studies*, 291-295, though Green, according to Rashdall, II. 326, is inclined to connect the origin of the university too closely with their activity.

³ Green, *Stray studies*, 304-307; Rashdall, II. 326.

⁴ On the early history of Oxford see Freeman, *English towns and districts*, 249-256; Green, *Stray studies*, 288-308; Lang, *Oxford*, 3-38.

been outlined? Was it due to a development out of the older conditions, or was it due primarily to one of those sudden and characteristic movements that played so important a part in the rise of the universities?¹ This is practically the same question as the one whether the university of Oxford is one of the primary or one of the derived universities. It also involves the further question whether it arose in connection with or entirely separate from the conventual schools at Oxford, a question to which no very definite answer could be given in considering the origin of Salerno, Paris, and Bologna. The older writers agreed that the university was in its origin connected with some one or other of the conventual schools at Oxford.² A more recent authority practically regarded the question as one that was at least open to discussion.³ Following him a still later writer has developed a theory which attempts to trace the origin of the university definitely to a migration from Paris in or about the year 1167.⁴ Before taking up the history of the university in the thirteenth century, it is necessary to notice more carefully these two theories of origin, and try to come to some conclusion regarding the important questions at issue.

First to be noticed is the earlier and until recently the generally accepted view of the origin of the university at Oxford. Though no definite history can be given of the educational life of Oxford previous to the twelfth century, it may be said with much certainty that the town possessed schools of some importance before the university era began. It is probable that at the time of the

¹ Rashdall, II. appendix vii, gives a list of secessions from the one university of Bologna as an illustration of such movements.

² Mullinger, *University of Cambridge*, 80, 81; Brodrick, *A history of the university of Oxford*, 3; Laurie, *Rise of universities*, 236.

³ Lyte, 4; "The schools which existed at Oxford before the reign of King John, are so seldom and so briefly noticed in contemporary records, that it would be difficult to show how they developed into a great university, if it were not for the analogy of kindred institutions in other countries."

⁴ Rashdall, II. 326-346.

Norman conquest Oxford was already a place of resort for students, who were no doubt attracted by the position of the town as a sort of provincial capital, and by the number and fame of its monastic establishments. Even in the preceding century the nearby monastery of Abingdon had been a seat of learning as well as of spiritual life.¹ In the absence of definite knowledge on the subject, one is led by the analogy of the European schools to believe that the Church was the foster-mother of the university, that it was in connection with St. Frideswide and the abbeys of Oseney, Abingdon, and Eynesham, that the earliest schools appeared, which might be considered the rudiments of the future *studium generale* at Oxford. On the other hand non-monastic or lay schools were also established at Oxford, which soon became centered on the street later known as School Street. It is in the earlier part of the twelfth century, however, that the schools of Oxford attained national celebrity and began to eclipse in fame the schools of Canterbury, Winchester, Peterborough, and other early centers of education.²

There are several interesting pieces of evidence that clearly show this growing importance of Oxford as a center of intellectual life. The earliest evidence is found in the letters of a certain Theobaldus Stampensis, who is described as a "Master at Oxford," and in earlier letters as a "Doctor at Caen."² From these letters it appears that sometime before 1117 he moved his school from Caen to Oxford, and that he had under him at Oxford "sixty

¹ Hunt, *The english church*, I. 168.

² This paragraph, which is based on Brodrick's *History of Oxford*, 1-3, is probably a fair presentation of the views of the older historians. In Laurie, *Rise of universities*, 236, it is said that before Alfred's time there were schools in connection with St. Frideswide and Ely, and that out of or in close connection with these Oxford and Cambridge arose. But, if so, it is doubtful whether the continuity can be traced through the confused period of the Danish wars, as Mullinger, *History of the university of Cambridge*, 9, points out.

² Rashdall, II. 333-335.

or a hundred clerks, more or less."¹ While not a monk, Theobaldus Stampensis was undoubtedly a theologian, though he is placed by one of his opponents in the category of "liberal masters."

A little later another theologian is mentioned as teaching at Oxford. In 1133 Robert Pullen, who had been a teacher at Paris, came to Oxford to deliver a regular course of lectures on the Bible.² He was the author of an important collection of "Sentences" which was in large part a basis for the more famous work of Peter Lombard. His teaching, however, is important only as a revelation of the growth of the Oxford schools and as the first real token of the movement towards a university. After him the intellectual history of Oxford is again a blank until the year 1149.

There had been in Italy a revival of the study of the Roman law, and the lectures of Irnerius especially, had systematized and made popular the new legal learning, which was now spreading rapidly throughout Western Europe. In 1149, possibly later, Vacarius, a teacher of the Roman civil law at Bologna, was induced to come to England to deliver lectures on that subject. Until recently the general opinion has been that these lectures were delivered in Oxford, and his teaching has been regarded as the real beginning of the university.³ Undoubtedly it is safe to say that if Vacarius came at this time to lecture in the Oxford schools, those schools had surely attained something of a European reputation, and were thus being fitted to become the nucleus of a higher school, or studium generale. However, his lectures were soon prohibited by King Stephen, though this prohibition did not prevent the spread of the study of the Roman law in England.⁴ On

¹ Rashdall, II. 334, note 2; Wood, History and antiquities of the university of Oxford, I. 142.

² *Annales monastici*, (R. S.), IV. 19. Pullen was probably an Englishman who had studied at Paris. For a fuller account of his life see Dictionary of national biography. XLVII. 19, 20.

³ "Hic in Oxonefordia legem docuit." Gervase of Canterbury, (R. S.), II. 384.

⁴ Bacon, *Opera inedita*, (R. S.), 420.

the contrary, the study of the civil law was soon followed by that of the canon law. The fact that Vacarius' *Liber Pauperum*, a compendium of civil law, held an important place in the studies of Oxford towards the end of the century would seem to confirm the statement of a contemporary writer that Vacarius did teach at Oxford, either in 1149 or later in the century.¹

It would be of the greatest interest and importance to know exactly where the lectures of Pullen and Vacarius were delivered and from what quarters the pupils came that listened to them, but on these points the chroniclers of the age do not shed any light. The successors of these two teachers, if there were any, are unknown, and the educational history of Oxford is again a blank for over thirty-five years. However, John of Salisbury tells that just before the accession of Henry II Oxford was stirred by the great debate on the question of the reality of universals.² The schools of Oxford seem to have been growing, though as yet there is no evidence for the presence of more than a single master at a time, nor are there any traces of chartered rights, of endowments, or of royal recognition. So far it cannot be said that a real university or corporation had come into existence.

But later, near the end of the reign of Henry II, the results of this gradual development become apparent. About 1185 Gerald of Wales visited Oxford and read before the assembled masters and students a book of his entitled "*Topographia Hibernica*." The account of this event given in his *Autobiography* shows that by this time a university existed in reality though not yet in name.

¹ As Vacarius was possibly living in England as late as 1198, *Chronica Rogeri de Hoveden* IV. 75, Rashdall, II. 335-338, is inclined to think that he must have lectured much later than 1149. Also from the way John of Salisbury speaks of these lectures, he thinks they may have been delivered at Canterbury under the patronage of Archbishop Theobald. See Rashdall, II. 336, note 1, for the passage from John of Salisbury. For biography of Vacarius, *Dictionary of national biography*, LVIII. 80, 81.

² Mullinger, *University of Cambridge*, 56, 57, quotes an interesting passage from him regarding these scholastic controversies.

Gerald states in a very self-complacent way that when the work was completed he did not desire to hide his candle under a bushel, but preferred rather to put it on a candlestick so that it might give light to others. Consequently he resolved to read his work at Oxford, where the clergy in England chiefly flourished and excelled in clerkship. The readings lasted for three successive days, one day being devoted to each of the three main divisions of the book. And he further tells that on the first day he received and entertained in his hostel all the poor scholars of the town; on the second day, all the doctors of the different faculties together with all their pupils who were of greater fame and note; and on the third day, all other scholars, along with many knights and townsfolk and burghers. He concludes by saying that this was a costly and noble act, which not only renewed the ancient times of the poets but was also, without a parallel in English history.¹

There are several very important things to notice in this description of the Oxford schools as it is given by Gerald of Wales. For the first time there is revealed at Oxford the existence of a *studium generale* in its broad general outlines. Not only is there a large scholastic population, but also, there is presented to view a number of masters gathered together in faculties, a condition that represents the second stage in the formation of the universities. After this stage is reached the great need of some kind of definite organization points toward the speedy formation of a guild or university. It is also worthy of note that Gerald of Wales selected Oxford as the best place to read his book, the inference being that nowhere else could he find an audience so appreciative or so widely representative. Indeed, he distinctly indicates that it was at Oxford that the clergy chiefly flourished and excelled in learning.² As there is no reason to doubt the essential facts of the

¹ *Giraldus Cambrensis*, (R. S.), I. 72, 73.

² "Ubi clerus in Anglia magis vigeat et clericatu praecelebat." *Ibid.*, (R. S.), I. 72.

passage, it may be said with confidence that by 1185 Oxford was in possession of a practically fully developed studium generale or university, widely known and attracting students to its lectures.

The evidence for a considerable body of clerks at Oxford in the reigns of Richard I and John cannot be controverted.¹ However, corporate growth and a formal royal recognition are not yet to be found, though it is impossible to believe that there was not some sort of inchoate organization and government even at this time.

So much for the older and long accepted view of the origin of the university of Oxford, for with this definite establishment of the university comes the end of the controversial period in its history. It should be remembered, however, that even yet Englishmen who were specially ambitious of intellectual attainment continued to go to Paris.²

The second and comparatively recent view regarding the origin of the university of Oxford represents the rise of the university not only as a sudden movement but also as entirely independent both of the earlier Oxford schools and of monastic influences. As the claim is made that this theory invalidates the older views on the question of origin, the arguments by which it is supported will be noticed in detail and examined with considerable care. Not until this is done can one appreciate to any great extent the full significance of the controversy or understand the real value of either of the two theories that are presented for consideration. Consequently an attempt will be made to outline the arguments advanced by Rashdall, the most recent and authoritative historian of the medieval universities, in support of his position, and to give briefly the conclusions to which he has been led as a result of his investigations.

¹ Memorials of St. Edmund's Abbey, (R. S.), I. 295; Rashdall, II. 347, 348; Lyte, 14, note 4.

² Mullinger, University of Cambridge, 133, 134. Wood, I. 207-213, gives a list of prominent Englishmen studying there.

It is absolutely certain, he says, that the schools in connection with which the university grew up were never at any time dependent upon a capitular or monastic body in Oxford.¹ If there had been any such connection, the masters and scholars would have been under the jurisdiction of some officer who represented the authority of that body, just as the masters of Paris were under the authority of the chancellor of the cathedral of Notre Dame. And again, the situation of the schools strongly points to the improbability of the hypothesis of an ecclesiastical origin. They were from the beginning established near the parish church of St. Mary's, and not in the neighborhood of St. Frideswide. Another argument against this hypothesis is the fact that as soon as the constitution of Oxford becomes known to us, the masters and scholars were under the authority of a chancellor who represented the bishop of Lincoln; in no way was this authority connected with any ecclesiastical foundation in Oxford. Had they at any time been so connected a struggle for emancipation would have been necessary, and such a struggle could hardly fail to leave some traces.²

These facts, according to Rashdall, are sufficient to establish a probability that the origin of the Oxford studium generale must be sought from without rather than from within. In northern Europe the universities that arose through a gradual development were always connected with a cathedral or collegiate church and are invariably found to have been under the supervision of some ecclesiastical authority, while at Oxford there was no cathedral or

¹The theory, of which this and the following paragraphs are meant as a summary, is given in Rashdall, II. 326-348. Traill, *Social England*, I. 339-342, and Stephens, *The English church*, II. 323, follow Rashdall and give briefer statements.

²Rashdall, II. 327, note 2, states that the sole connection between St. Frideswide and the university was the lodgment at St. Frideswide of the university chest for safe keeping, a relation hardly compatible with a recent struggle for emancipation.

collegiate church and the masters seem from the first to have been practically independent of such immediate ecclesiastical control. The natural inference from these facts is that Oxford must have originated in a migration from one of the primary or archetypal universities. At first glance such a theory seems quite improbable, but it is entirely in keeping with the migratory habits of medieval students, and can be shown to have been the cause of the rise of other universities.¹ And if Oxford did originate in a migration it will hardly be disputed that it must have been from Paris, which was the usual place of higher instruction for Englishmen.

There are allusions in the contemporary chroniclers which make it highly probable that one result of the quarrel between Henry II and Becket was the establishment of a university at Oxford. The first of these allusions is contained in a letter written in 1167, by John of Salisbury to Peter the Writer, in which he speaks of the expulsion of the alien scholars from France.² Is it not probable that the alien scholars comprised, or at least included, the English "nation" at Paris, especially since the English were the largest body of foreigners at that university? The expulsion may have been meant as an act of hostility against Henry II who was regarded as the oppressor of the Church and its primate or it may have been a voluntary migration. In either case the movement was of considerable magnitude, as, in the mind

¹ "In ascribing the origin of Oxford to an academic migration I am at least ascribing it to a *vera causa*, which is known to have produced the Universities of Reggio, Vicenza, Vercelli, Padua, Leipsic, and other permanent Universities, to say nothing of the enormous number of merely temporary migrations." Rashdall, II. 329. It is pointed out by a writer in the Edinburgh review, CLXXXIV. 105, that this view is not entirely original, and to substantiate his statement he quotes a passage from Meiners, Geschichte der hohen schulen, II. 94.

² "The Mercuriales were so depressed that France, the mildest and most civil of nations, has expelled her alien scholars." Materials for the history of Thomas Becket, (R. S.), VI. 235, 236. The term "Francia," however, probably meant only the lands of north central France that were ruled by Louis VII.

of contemporaries, it was associated with other events of European importance.¹

In the course of the struggle with Archbishop Becket Henry II decreed that no clerk be permitted to cross the English channel without the consent of the king or his justiciar, and also that all clerks possessing benefices in England be ordered by the sheriffs to return within three months if they did not wish to lose their benefices.² The effect of these provisions would be to recall all beneficed clerks who were studying in Paris and to prevent prospective students from going there. Now the question is, what became of this host of scholars shut off from study at Paris? A knowledge of the habits of the medieval scholar leads to the conclusion that at least a part of these scholars would be sure to congregate somewhere in England, and so transfer to English soil their studies, their discipline, and, as far as possible, their organization. The only place where such a congregation of scholars is to be found is Oxford. So, if the recalled scholars did not go to Oxford, then where did they go?

Though the date of these ordinances is uncertain, the best authorities refer them to 1169. But it seems probable that the ordinances were issued at different times, and that these particular provisions may date from the close of 1167, the time when the letter of John of Salisbury was probably written. If all this is true, the birth of a studium generale at Oxford is fixed in the year 1167 or the beginning of 1168, and is due to a sudden movement or migration from Paris. But it is not to be denied that there were already schools of some importance and scholastic reputation at Oxford. The evidence for the presence of Theobaldus Stampensis and Robert Pullen is conclusive for the existence of not

¹ John of Salisbury to Peter the Writer, *Materials for the history of Thomas Becket*, (R. S.), VI. 233-236.

² Gervase of Canterbury, (R. S.), I. 215; *Chronica Rogeri de Hoveden*, (R. S.), I. 231, 232; *Materials for the history of Thomas Becket*, (R. S.), 148, 149.

unimportant schools there before 1167, though the presence of the jurist Vacarius before that date is somewhat doubtful, and his lectures were possibly delivered before the Oxford students later in the century.¹

There is no evidence before 1167, however, for the presence of more than one master at a time, and consequently there was as yet no university. Besides, there were other schools fully as important as were those of Oxford previous to that date. Why, then, was Oxford the only one of these schools to grow into a *studium generale*? Though it is conceivable that it may have developed through evolution, yet the hypothesis of migration is the only one that explains all the facts, especially as regards the independence of the masters and their freedom from immediate ecclesiastical control. It has been shown that a migration did take place from Paris to England about 1167; it cannot be proved that any of the alien scholars came to Oxford; but for half a century nothing is heard of a *studium generale* anywhere except at Oxford, and even at Oxford there is no evidence for its existence before 1167, while such evidence is very strong a few years after that date. Here, as in physical science, the hypothesis which alone explains all the facts and which alone accords with known analogies, is entitled to at least a provisional acceptance.

This chain of circumstantial evidence is further strengthened by the great change in the number and frequency of allusions to Oxford after the date that has been assigned for its origin. These allusions strongly indicate the existence of several faculties, made up of a number of masters, and of a large body of scholars, some of them from distant regions. The earliest allusion to a *studium generale* or university noticed by previous historians is the amusing account by Gerald of Wales of his visit to Oxford about 1185. But the direct evidence goes further back than that. In 1180, or about that date, there is a record of the miraculous cure of a scholar at

¹ Ante, 29, note 1.

Oxford, who had come all the way from Yorkshire "for the sake of his studies."¹ The second piece of evidence is from an undated conveyance, which, on paleographical grounds, cannot belong far from 1180. Its importance lies in the fact that it reveals a population which was naturally dependent upon a university community, such as bookbinders, illuminators, writers, and parchmenters.² And lastly, the story of the cure of Prior Robert of St. Frideswide brings out the fact that by 1172 the body of scholars was large enough to demand university sermons and that these clerks were from various parts of England.³ The significance of this statement is apparent when it is remembered that it belongs to a period only five years after 1167.

After the time of Gerald of Wales the allusions are frequent and conclusive,⁴ and there is no doubt that the university of Oxford has come into existence and is fairly prosperous before the end of the twelfth century. Such, then, are the main points in a theory which has for its object the establishment of the view that Oxford suddenly came into prominence as the result of the external circumstance of a migration from Paris.⁵

Should this theory be given the provisional acceptance that is asked for it? There are several considerations that may be urged in its favor: it is presented by a great authority on the history of the medieval universities; it attributes the origin of Oxford to a picturesque series of events, and so becomes a very attractive theory; and it has the advantage of being a simple, clear, and definite explanation of the rise of the university at Oxford. In addition to this, the theory makes a satisfactory explanation of some of the difficult problems that confront those who uphold a theory of gradual development in connection with the existing schools of

¹ *Acta sanctorum*, Octobris, VIII. 579.

² Rashdall, II. 343.

³ *Materials for the history of Thomas Becket*, (R. S.), II. 99.

⁴ Rashdall, II. 346-348.

⁵ Rashdall clearly summarizes the evidence, II. 345, 346.

Oxford, as, for example, the early independence of the masters and their freedom from the control of any local ecclesiastical authority. Besides, it undoubtedly offers a strong and definite explanation for the rapid development of a *studium generale* during the latter half of the reign of Henry II. It also explains in a satisfactory way the early constitutional dependence of Oxford upon Paris, though this relationship may easily be accounted for by two facts: first, the intellectual leadership of the latter university and, second, the custom of English scholars in seeking higher training upon the continent.

But, on the other hand, there are some strong objections that must be urged against the theory. The evidence presented in proof of a migration is not altogether convincing, as it is based on a series of assumptions which, to say the least, are rather bold. It is little more than an inference to say that the students expelled from France about 1167 were the same that were recalled two years later by Henry II. Furthermore, it does not necessarily follow that an expulsion of alien scholars from France should result in a migration to England and to the town of Oxford, and the contemporary allusions do no more than point out the possibility of such a movement. Besides, if a migration of the magnitude and importance of this one really took place, it is very hard, indeed, to account for the utter silence of all the English chroniclers of the time in regard to an event that was undoubtedly striking and picturesque enough to appeal to them.¹ And, finally, we may ask whether there is any real necessity for the hypothesis of a formal migration and whether, on the whole, the evidence is not compatible with the theory of gradual development, at least in a somewhat modified form.

It may be admitted at once, however, that this older view is open to criticism in several respects. In the first place, it is without doubt somewhat vague and indefinite as to the details of the growth of a *studium generale* at Oxford and does little more than

¹Edinburgh review, CLXXXIV. 107, 108.

trace the broad lines of its development. This indefiniteness, perhaps, may be largely accounted for by the fragmentary character of the evidence and by the very nature of a movement that is gradual and not spectacular, thus failing to attract the close attention of the chronicler. Also the university movement on the continent, especially as regards Bologna and Paris, was of necessity discussed in the same broad general way, and thus it appears that lack of definiteness is characteristic of this whole question of university origins. Furthermore, once admitting the existence of important schools at Oxford during the twelfth century, not only is there justification in trying to explain the rise of the university by reference to European analogy, but in the absence of positive evidence this argument from analogy should be given considerable weight. Is it too much to suppose that, under somewhat similar conditions, the schools of Oxford may have undergone practically the same process of evolution that took place at Paris and at Bologna? This deduction becomes considerably stronger when it is found to agree very well with the known facts.

It should be pointed out in the second place, that no authoritative explanation has been given for the independent position of the early Oxford masters and their freedom from all immediate ecclesiastical control. That such was their position is clearly established by the earliest documentary evidence, namely, the Legatine Ordinance of 1214. In the absence of any contemporary allusions, plausible reasons must be sought for this somewhat anomalous situation. Is it not possible that the growing schools of Oxford were able to establish their independence of monastic control and that for some reason the records fail to mention the struggle for emancipation? Or, perhaps, this result was simply due to the confusion arising from John's struggle with the church.¹ Or, possibly, the schools outgrew their monastic origin and consequently were placed under the immediate ecclesiastical authority of

¹ Rashdall, II. 418.

the diocesan bishop of Lincoln. The Legatine Ordinance of 1214 strongly shows how scrupulously this authority of the bishop, as well as that of the papal see, was recognized by all the parties concerned in the contests of that time. Another plausible conjecture is, that the university was an outgrowth of the secular rather than of the monastic schools at Oxford, and that by reason of this fact it was from the first independent of all local ecclesiastical control.¹ These suggested explanations are, of course, little more than mere conjecture, though any one of them would seem to have as much basis in fact as the hypothesis of a formal migration, through which the attempt is made to meet the same difficulty. Aside from such conjectures, however, it may well be asked whether, in the absence of positive evidence, this difficulty is vital enough to lead to the rejection of a theory that is reasonable and otherwise well-supported by the facts.

And, finally, it may be said that the advocates of the theory of gradual development have apparently failed to take sufficient account of certain special conditions in England during the reign of Henry II that may have played a considerable part in the actual transformation of the Oxford schools into a *studium generale*. It is highly probable that the hostility of France and England, after the accession of Philip Augustus, the expulsion of a large body of foreign students from the university of Paris, and especially the ordinance of Henry II forbidding English clerks to study abroad, did have an important influence in hastening the formation of a university at Oxford. Many of these English students, shut off from higher instruction at Paris, would naturally drift to Oxford because of its fame as a center of educa-

¹ "This only is reasonably certain, that their auditors [that is, of Pullen and Vacarius] were for the most part students not attached either to the Priory of St. Frideswyde or the Abbey of Oseney, else these two houses would surely have obtained some powers at Oxford analogous to those exercised at Paris by the Cathedral Church of Notre Dame and the Abbey of St. Geneviève." Lyte, 12.

tion, and thus give a strong impulse to the growth and development of its schools.¹ Thus, without upholding the hypothesis of a formal migration, the essential truth in Rashdall's theory is retained. This special impetus, in coöperation with the general tendencies of the renaissance of the twelfth century, is quite sufficient to account for the comparatively rapid development of those schools into a university. These educational influences in turn may have been reënforced and quickened, to some extent at least, by the spirit of nationality then beginning to develop more strongly among the English people.² Such a spirit would naturally and inevitably lead to the demand for a center of higher instruction within England itself, independent of the university of Paris or other centers of education on the continent.

With the acceptance of this rather important modification, is not the view of the older historians in regard to the origin of Oxford University justified? The two fundamental facts at the basis of this theory have been satisfactorily established, it is believed, by the evidence, namely, the existence of schools of considerable importance at Oxford previous to the rise of the university and the gradual, though somewhat rapid, transformation of these schools into a *studium generale* during the latter part of the reign of Henry II. Therefore, for the present, it would seem that the theory of gradual development, at least in its broad general outlines, should be accepted and, consequently, the university of Oxford regarded as one of the primary rather than as one of the derived universities of Europe.

¹The war between Philip Augustus and Richard I prevented Gerald of Wales from going to Paris. Giraldus Cambrensis, *Opera*, (R. S.), I. 93.

²Stubbs, *Constitutional history of England*, I. 504, 505. For other co-operating influences, as, for instance, peace and prosperity, see Norgate, *England under the angevin kings*, II. 167, 168.

CHAPTER II

THE DEVELOPMENT OF OXFORD IN THE THIRTEENTH CENTURY

The beginning of the thirteenth century marks the opening of a new era in the history of the university of Oxford. It is during this century that Oxford developed into one of the greatest of the medieval universities with an influence and importance that were European in extent both as a center of higher education and as a leader in medieval thought. It is also in this period that the university was to a considerable degree able to cast off the control of the Church and of the borough of Oxford and to establish itself as a practically self-governing corporation with a good deal of power and a fairly extensive jurisdiction of its own. These are the characteristic features of university history that should be made clear by this survey of conditions and developments to the close of the thirteenth century.

This commanding position was attained gradually, and then only through the surmounting of grave dangers and as a result of an almost constant struggle for independence and for privileges of various kinds. At the very beginning of its recorded history the university was brought face to face with one of the gravest crises in the course of its development. As a result of trouble between the scholars and the burgesses of Oxford in 1209 and the consequent hanging of two or three of the former, the university was actually suspended for several years and its students dispersed to their homes or to other well-known centers of education, as Cambridge, for example. Though the probability of permanent dissolution was considerable, such a result was finally averted by the complete submission of the townsmen some four years later. This submission, as embodied in the Legatine Ordinance of 1214, marks therefore an important stage in the history of the university of Oxford.]

ford, if indeed we do not really date the very existence of the university from this time.¹

After the return of the scholars to Oxford, the university in all probability led a somewhat precarious existence for a number of years. But gradually the student body increased in numbers, the university developed in various directions, and by the middle of the thirteenth century a fairly well-defined universitas or corporation undoubtedly existed at Oxford with a chancellor at its head. In 1231 this society of masters had become sufficiently important to attract the attention of the king and to receive definite aid from him.²

A few years later the university is in possession of a permanent endowment. This fund, originating in a fine levied on the Oxford burgesses in 1214, was by an ordinance of Bishop Grosseteste in 1240 converted into a permanent loan chest for the benefit of needy scholars at the university. Not only is this the first property possessed by the university of Oxford, but it is significant also as foreshadowing to a certain degree the later English collegiate system.³

As the middle of the century is approached the corporate development of the university stands out with even greater clearness. In 1244, for example, the chancellor as the representative of the university received the first important extension of his authority at the expense of the borough of Oxford, and from that time on the development of his jurisdiction, both civil and criminal, was not only very rapid, but also very important as well.⁴ Also, in 1252, the period is reached when the university began definitely to issue statutes for the regulation of its internal affairs.⁵

¹ Matthew Paris, *Chronica majora*, (R. S.), II. 525, 526; *Munimenta academica*, (R. S.), I. 1-4.

² Royal and other historical letters, (R. S.), I. 396-398.

³ *Munimenta academica*, (R. S.), I. 8-10.

⁴ See post, 72, and note.

⁵ *Munimenta academica*, (R. S.), I. 25.

By the middle of the thirteenth century the university of Oxford had also attained an important position in medieval education and a considerable influence on the thought and opinion of the age. Its influence on the intellectual life of the time and its relation to public opinion is well shown by the general respect with which its decisions were received and by the apparent eagerness of men to appeal to its judgment. Thus when Henry III became engaged in a controversy with Raleigh, bishop of Norwich, over the election of the latter to the see of Winchester, he appealed to the universities of Oxford and Paris. Oxford decided in the king's behalf, and later the bishop was publicly denounced in the Oxford schools according to the usual custom in such cases.¹

Again, in 1252, Archbishop Boniface of Canterbury went to Oxford in order to publish to the scholars assembled there from the different parts of the world the infamous conduct of the bishop of Winchester, so that they might make it known even to the most distant nations. As he neared the town an innumerable throng of clerks mounted on richly caparisoned horses and dressed in fine apparel came out to meet him with all honor and applause that was considered due to an archbishop and primate of England. His reception was such that he and his followers were obliged to admit that Oxford was undoubtedly worthy to be reckoned the rival of the university of Paris.²

In a somewhat similar strain is the argument made in person before the king in 1258 by the chronicler Matthew Paris, which also exalts Oxford to a high position second only to that of Paris. "My liege, for God's love have pity on the Church now tottering and in imminent danger of utter subversion; the university of Paris, the mother of so many famous and worthy prelates, at this time is sorely troubled; if the university of Oxford be disturbed

¹ Mathew Paris, *Chronica majora*, (R. S.), IV. 263-265, under date of 1243.

² *Ibid.*, V. 352-354; Lyte, 47.

and molested also, especially at this present, being the second school of the Church, yea the fundamental base thereof, it is greatly to be feared lest the whole Church do fall and come to a general confusion. Whereupon the king made answer, God forbid it should be in my time."¹

These estimates of the fame and importance of Oxford are in all probability heightened by national pride and somewhat pardonable exaggeration, but when one takes up the question of the number of students in thirteenth-century Oxford this element of exaggeration unquestionably goes beyond all reasonable bounds. For one thing, the medieval mind was very prone to exaggeration and to large numbers. It should be noted also that the estimates of the chroniclers are usually not contemporary statements and may perhaps represent the belief in an earlier heroic age in university history. But on the other hand it should be remembered that the term "scholar" soon came to be in the Middle Ages a very inclusive one, embracing not only the students themselves but also their personal attendants, their servants, and indeed all those whose work was in any way connected with the activities of the scholar.² In addition, it is very probable that the numbers given by medieval writers also include those in the grammar schools of the university town.

There can be no doubt, however, that the attendance at the medieval universities was far from being as great as alleged. There is at least one objection that seems to be especially conclusive, at least as far as Oxford is concerned, namely, the inability of the town to furnish necessary accommodations for thirty thousand or even for fifteen thousand students.³ And, perhaps, even the three thousand that are said to have left Oxford in 1209 should be

¹ *Chronica majora*, (R. S.), V. 618; Wood, I. 256.

² *Munimenta academica*, (R. S.), I. 52; Fuller, *History of Cambridge*, 48; Willard, *The royal authority and the early english universities*, 7-9.

³ Rishanger, *Chronicle*, 22; Wood, I. 266. See Rashdall, II. 582, for the line of reasoning by which he reduces the 30,000 to 3,000 or less.

reduced by half or by two-thirds, though manifestly such procedure is more or less arbitrary. Probably we do not go very much too far in scaling down the medieval figures when we accept the statement that the maximum number at Oxford university during the thirteenth century was between fifteen hundred and three thousand students.¹ This latter number is approximately in agreement with the estimate made by the townsmen in connection with the great town and gown fight of 1298.² When rightly appreciated by the student of medieval education, these comparatively insignificant figures become full of meaning and on account of their reasonableness more effective than the much larger numbers given by medieval historians.

As the university grew in numbers contests between the scholars and the townsmen seem to have become more and more numerous and also much more bitter. Following the contest of 1209 and the return of the scholars to Oxford in 1213 the records of the thirteenth century are full of such controversies between town and gown, and such also is the character of the fourteenth century and to a less degree of the fifteenth as well. A detailed account of these contests will be given in the following chapter, consequently it is sufficient here to point out the great difficulty confronting the borough officials in the keeping of the peace and the protection of life and property. Many times during the period under consideration some act or dispute, trivial enough in itself, aroused the students or the townsmen to the fray, and often the streets of Oxford actually resounded with the din of pitched battles between the partisans of the two rival corporations, university and borough.

In addition to these contests between the scholars and the townsmen, there were dissensions and a strong factional spirit within the university community itself. This internal disorder should now be noticed, as it not only gives a clear and direct view

¹ Rashdall, II, 589; Rogers, *Six centuries of work and wages*, 167.

² Post, 84, and note.

of the state of discipline at Oxford but also shows the seriousness of the municipal problem of keeping the peace. The effect of a migration from the university of Paris in 1229 was very unfavorable as far as discipline was concerned and led to the interference of Henry III in behalf of order.¹ From that time on the increasingly cosmopolitan character of the university at Oxford seems to have been very unfavorable to both discipline and quiet. The young and impetuous scholars from the various countries, in addition to the fact that they were often quarrelsome in disposition, regarded each other with a good deal of natural antipathy and even distrust, a feeling that was quite natural and general in the medieval period. At any rate it is easy to see that the slightest provocation often led to blows and even to pitched battles in the streets of Oxford between the students of the various nations. This national and factional spirit was so apt to break out at the time of the celebration of some festival or saints' day that the university was led to prohibit all such celebrations.²

These disorders continued in spite of all such prohibitions and many bloody feuds naturally resulted. In 1252 a violent disturbance took place between the northern scholars and the Irish scholars which led to the imposition of an oath upon both factions that they would keep the peace of the university.³ Again, in 1258, there arose a serious quarrel between the scholars of the various nationalities represented at Oxford, Scotchmen, Welshmen, Northerners, and Southerners, and finally the strife reached such a pitch that the rival factions with banners displayed fought each other in the streets of Oxford.⁴ Nine years later there was further trouble between the Northern and the Irish scholars very similar in character and results to that of 1252.⁵ Such facts as these

¹ Royal and other historical letters, (R. S.), I. 396-398; Lyte, 47, 48.

² *Munimenta academica*, (R. S.), I. 18.

³ *Ibid.*, I. 20-24; Wood, I. 244-247.

⁴ Matthew Paris, *Chronica majora*, (R. S.), V. 726.

⁵ Wood, I. 270-272.

are the best possible commentary upon the almost complete lack of discipline in a medieval university and upon its consequences for both the university and the town.

In 1273 there was a still more serious encounter between the Northern scholars and the Irish scholars, in the course of which several of the latter were killed. This contest not only gives a further insight into the conditions prevalent at Oxford but it also brings into prominence the relations of the central authority and of the Church to the university and incidentally to the town as well. The killing of the Irish scholars created considerable alarm and resulted in the secession from Oxford of many of the leading members of the university. Edward I, however, was opposed to their departure and ordered them to return at once, under penalty of his great displeasure if any of them should presume to disobey. Interesting, also, is the attitude of the bishops, who issued an exhortation to the clerks within their respective dioceses that they should go to Oxford "not armed for a fight, but rather prepared for study."¹

The utter failure of this exhortation is shown by the occurrence in the very next year of still another encounter between the factions. But this time four of the clerks concerned in the disorder were committed by the king to the Tower of London, a summary proceeding which led to a second attempt at reconciliation and to a mutual restitution of the plunder that had been seized. A more comprehensive oath to keep the peace was now exacted, and every member of the university was required to swear that he would neither carry arms nor join in any conspiracy against the peace.² Nevertheless, the spirit of faction and disorder continued to run high during the latter part of the thirteenth and the early part of

¹ Lyte, 130, 131; Knighton, *Chronicon*, (R. S.), I. 267.

² Lyte, 131; Rashdall, II. 362, note 3. For an earlier statute regarding the carrying of arms see *Munimenta academica*, (R. S.), I. 16; for a later and more detailed one, *ibid.*, I. 91.

the fourteenth century, until it culminated in the great struggle of 1334 and the consequent secession to Stamford.¹

There were other causes of internal dissension besides those arising out of feuds among the scholars. These will be dealt with later on, and it will then be seen that one fruitful source of trouble resulted from the activity of the mendicant friars and the hostility that arose between them and the secular clergy. Also there was a strong feeling of jealousy and even hatred between the friars and the older Benedictine orders.² Furthermore, there were contentions between rival masters and between different systems of education and thought. On a visit to Oxford in 1276 Archbishop Kilwardby, a Dominican, condemned a number of errors that he found there in the teaching of grammar, logic, and natural philosophy. Eight years later, in ratifying this condemnatory decree, his Franciscan successor, Archbishop Peckham, was regarded as attacking the famous Dominican philosopher Thomas Aquinas, and naturally these differences became one of the many points of controversy between the rival Franciscans and Dominicans.³ It is apparent, therefore, that the latter part of the thirteenth century was a period of considerable disorder, rivalry, and contention, though we must not lose sight of the fact that the university continued to prosper and to exert a strong European influence.

While the university of Oxford was growing in numbers and developing in power and European influence its constitution also was undergoing important changes. Perhaps the most striking and important constitutional change during the thirteenth century was the rapid growth of the power of the chancellor as the head of the university community. It seems that the chancellorship may be definitely traced to the Legatine Ordinance of 1214, as it is in this document that the first authentic allusions to the office of

¹ Rashdall, II. 397, 398; Lyte, 134-136; Knighton, *Chronicon*, (R. S.), I. 472.

² *I'ost*, 102, 103.

³ *Annales monastici*, (R. S.), IV. 297-299; Wood, I. 305-309, 318-322.

chancellor are to be found. Though there must have been some sort of official head previous to 1214, still nothing is definitely known concerning the government of the university during that early period. It is certain, however, that some degree of organization was an absolute necessity for the community of masters and scholars revealed by the visit of Gerald of Wales to Oxford or by the dispersion of 1209. It is fairly probable that an approach to unity was attained through an official known as the master or rector of the schools.¹ This organization, however, had not advanced beyond the rudimentary stage, or, in other words, the university was not yet fully instituted but was still rather inchoate. It may be said, perhaps, that the last stage of university development was practically coeval with the rise of the chancellor to the actual headship in its affairs.

The most important of the allusions in the Legatine Ordinance is contained in the provision that clerks who were arrested should be surrendered on the demand of the "Bishop of Lincoln, or the Archdeacon of the place or his official, or the Chancellor, or whomsoever the Bishop of Lincoln shall depute to this office." Also a clause concerning the feast for the poor scholars on St. Nicholas' day mentions the "Chancellor whom the Bishop of Lincoln shall set over the scholars" at Oxford.² From these allusions two inferences may be made with some reason; one is that the authority of the chancellor was derived from that of the bishop of Lincoln, the other, that up to this time the chancellorship had not been established. It seems, however, that from the first the chancellor was elected by the masters from their own number,³ and this peculiar situation has inclined certain writers to regard the earliest

¹ Rashdall, II. 353, 354.

² *Munimenta academica*, (R. S.), I. 2; Rashdall, II. 351, 352.

³ *Monumenta franciscana*, (R. S.), I. 100, 101; Rashdall, II. 356.

chancellors as being in reality elective rectors of the schools whose election was confirmed by the bishop of Lincoln.¹

Though the office of chancellor was thus officially recognized in 1214, the chancellorship was not yet firmly established and for some time at least its existence was more or less precarious. In 1221, for instance, Robert Grosseteste acted for a short time as the head of the university, but as the representative of the bishop of Lincoln he was simply styled the "Rector of the Schools." It is probable that the more dignified title of chancellor was withheld from him because of the jealousy of the bishop in regard to this designation.² But in this same year, and again in 1231, the title was definitely recognized by the Pope.³ Also in the charters of privileges granted to the university in 1244 and in 1255 the head of the university was called "Cancellarius," and he was regarded as an independent representative of the corporation of masters and scholars.⁴ The royal writs of 1231 strengthened his authority, and by the middle of the century certain decrees or statutes seem to run in his name.⁵ By this time, therefore, the university may be regarded as a fully constituted corporation with a definite head already identified with its interests, whose title is that of chancellor and whose position is admirably adapted to a rapid extension of his authority.

It is in 1244 that the first great increase in the authority of the chancellor is found and from that time on the development of his power was very rapid, especially on the side of his judicial

¹ Brodrick, 11, says, "it will probably never be determined with certainty whether the earliest chancellors derived their authority exclusively from the bishop of Lincoln as diocesan, or were in the nature of elective rectors of the schools (*Rectores Scholarum*), whose election was confirmed by the bishop of Lincoln."

² Robert Grosseteste, *Epistolae*, (R. S.), xxxiii.

³ Rashdall, II. 754, 755, 756.

⁴ Brodrick, 12; Stubbs, *Select charters*, 377, 378.

⁵ Royal and other historical letters, (R. S.), I. 396-398; *Munimenta academica*, (R. S.), I. 16-18.

prerogatives and privileges, and was very closely connected with the long series of contests waged between the university and the borough of Oxford. Though the position of the chancellor was in the beginning purely ecclesiastical, his final status, in theory at least, reveals a threefold origin, namely, the original ecclesiastical jurisdiction, the successive royal grants in favor of his office, and, finally, those duties incident to the headship of the university, such as the punishment of students for disobedience to the statutes. But in actual practice, perhaps this last phase of his activity was not clearly distinguished from his other functions.¹

The ecclesiastical jurisdiction of the chancellor dates from the ordinance of 1214, and as the bishop's representative this official enjoyed the rights and privileges belonging to the ecclesiastical courts generally. His relations to his ecclesiastical superior were for a time friendly enough, but by the middle of the century the inevitable contest began. As the distant bishop was at a disadvantage, the chancellor was able to gain almost complete independence by the close of the thirteenth century. Before the end of the following century his independence was practically complete.

Perhaps the most interesting phase of the development of the chancellorship was the extension of its power into the field of civil and criminal jurisdiction. It is here that the central authority played such an important and decisive part and in all probability this development would have been impossible without the more or less consistent aid of that authority. Time after time the king interfered in the controversies arising between the university and the town, with the result that usually a charter of privileges and exemptions was granted by him to the former. The chancellor as the representative of the university guild or corporation profited greatly by this peculiar situation. The successive steps in the growth of this jurisdiction, both civil and

¹ Willard, 14, 15; Rashdall, II. 359.

criminal, will be noticed in some detail in the chapter on the relations of the university to the borough of Oxford, and consequently it is perhaps sufficient to note here that the chancellorship continued to develop during the thirteenth and the following centuries until finally the university became a sort of despotism with the chancellor at its head. Perhaps the great contest of 1356 marks the time when the university and its chancellor had actually become dominant over the borough and threatened almost completely to overshadow its government.¹

It may well be asked, what reasons or explanations may be given for this extension of a purely spiritual jurisdiction into such wide fields? One reason is to be found in the difficulty that arose in many cases of determining whether the clerk concerned was the defendant or the plaintiff and the consequent tendency to give the ecclesiastical court the benefit of the doubt. Another explanation is seen in the fact that the spiritual courts already had jurisdiction over the private life and the morals of laymen and that this jurisdiction served as a basis for acquiring further powers. Also the growth of the chancellor's jurisdiction was greatly helped by the fact that there was no bishop's court at Oxford to overshadow his authority or to supervise his actions too closely. Nor should one overlook in this connection the practically consistent policy of the royal authority during the thirteenth century in upholding the chancellor in disputes with the bishop of Lincoln or the burgesses of Oxford. And, finally, because of this favorable attitude and because of his position as head of the university the chancellor was given sufficient power to enforce his authority; as an ecclesiastic he had the power of excommunication, as a lay judge he could depend on fines, imprisonment, or banishment, or whenever necessary he could demand the aid of the mayor and bailiffs of Oxford in the enforcement of his authority.²

¹ See, for a more detailed summary, Willard, 15-19.

² *Munimenta academica*, (R. S.), I. 13, 16, 18, 94; *Royal and other historical letters*, (R. S.), I. 396-398; Willard, 31; Rashdall, II. 391.

The other constitutional features of the period are of much less importance than the development of the chancellorship, and especially so far as the purposes of the present study are concerned. There are several of these features, however, that call for at least a brief mention. In the first place the institution of the office of proctor and the character of the duties performed by these officials should be noticed. In the year 1248 representatives of the scholars and the burgesses appeared before the king at Woodstock in order to argue their differences and to seek redress through the aid of the royal authority. One provision of the charter of privileges granted at this time by the king to the university stipulated that the chancellor and the proctors should have the right to be present at the assize of bread and ale. This is the first time that the proctors are mentioned in the records of the university.¹

While the chancellor in theory at least represented the episcopal authority, the two proctors were regarded as the official representatives of the university and as such they possessed certain important executive functions naturally belonging to the presidency of the corporation. As the proctors were chosen by a somewhat peculiar system of indirect election, it resulted that they represented respectively the northern and the southern nations, though both always belonged to the faculty of arts.² Their duties as formulated from time to time were as follows: to demand from all inceptors the oath concerning the conservation of the peace, to suspend masters for any violation of the statutes of the university, to keep lists of grave offenders, to render faithful account of all the receipts of the university, to aid the chancellor in the summoning of the congregation and the supervision of its meetings, and various other functions.³

¹ *Munimenta academica*, (R. S.), II. 779.

² *Ibid.*, I. 81.

³ *Ibid.*, I. 12, 22, 24, 30, 81, 109, 110.

The organization into "nations" did not become as important at Oxford as it did on the continent. Though the English organization was apparently modelled on the Parisian system, still there were never more than two distinct nations at Oxford, a modification due in all probability to the fact that the foreign masters at the university were not sufficiently numerous to demand such separation.¹ Even the Welsh, the Irish, and the Scotch, usually attached themselves to the northern or the southern nation. However, there were many conflicts between the students from these various nationalities, and thus the difficulty of keeping the peace was considerably increased.

The actual control of the university resided in the teaching body, namely, the masters or regents. It is in their name that statutes are decreed.² But at Oxford during the later thirteenth century the non-regents, that is, those masters not actually engaged in teaching, definitely established their position as an integral part of the university organization, and this development is a distinct peculiarity of the Oxford constitution. It is possible that the non-regents were mentioned in the records as early as 1252, and there can be no doubt that by 1280 their position was securely established.³ Until the contest with the friars in the early fourteenth century it was the accepted principle that a statute required the consent of all the faculties and of the non-regents in addition, but as a result of that contest it was enacted that two faculties together with a majority of the non-regents should have the power to pass permanent statutes for the whole university.⁴

Probably the most important movement in the development of the English universities during the latter part of the thirteenth

¹ Rashdall, II. 368. Even the Irish masters were not very numerous. *Munimenta academica*, (R. S.), I. 23.

² *Ibid.*, I. 20, 30.

³ *Ibid.*, I. 20, 41, 43, 56.

⁴ Rashdall, II. 374; post. 101.

century was the beginning of the collegiate system, though it is true that the colleges did not become predominant until considerably later.¹ Like the universities themselves the colleges may be said to have arisen in answer to the needs of the time, and consequently their origin should not be too definitely traced to specific foreign influences, though these influences probably did help to determine the character of the movement in England. At the university of Paris the colleges developed very early, but until the foundation of the Sorbonne about 1257 there are no traces of the essential features of a truly collegiate system, namely, an endowed corporate body somewhat secular in character and possessing some rights of self-government. The Sorbonne may well have furnished a precedent for a similar movement at Oxford which found its expression in the famous Merton foundation.²

It would be difficult, however, to offer proof that there was any conscious imitation of the constitution of the Sorbonne by Walter of Merton or by other founders of Oxford colleges. Besides, two important differences between the Parisian and the Oxford college may be pointed out; the former was appropriated to the use of a special faculty while the latter was open to students in all the faculties, and, also, the Parisian system did not place the administration of the college in the hands of an elective head as was distinctively the case at Oxford, though the Sorbonne itself was for a time a partial exception to this principle.³ But in both cases it is probably true that the object of the founders

¹ It was not until 1421 that clerks were forbidden to lodge in the houses of laymen. *Munimenta academica*, (R. S.), I. 279. But not till the time of Charles I did the colleges succeed in engrossing the entire government and in absorbing nearly the entire population of the university. Traill, *Social England*, I. 435.

² Brodrick, 15, 16, argues strongly for the distinctively English origin of the Oxford colleges. With this compare Rashdall, I. 479: Paris was the true home of the collegiate system; "from Paris it passed to those Universities upon which it has obtained its longest and firmest hold."

³ Rashdall, I. 490.

of colleges was simply to secure board and lodging for poor students who were not able to pay for it themselves. Perhaps in its actual origin, therefore the college was very little more than an endowed hospicium or hall.¹

The first permanent endowment at Oxford, however, took the form of a loan chest, established in 1240 by an ordinance of Bishop Grosseteste. Its establishment was in some degree a result of the severe terms of the Legatine Ordinance of 1214. These terms were naturally a great humiliation to the townsmen and, as might be expected, a little later they tried to get rid of the burden laid upon them. Thus, in 1219 they transferred to the abbot and convent of Eynesham the obligation to pay an annual fine to the university and to provide a feast every year for a hundred poor scholars.² This fund, the first property possessed by the university, was not well administered, however, and Grosseteste's ordinance was issued to regulate its use. It was decreed that the fund should be deposited for safe keeping in a chest at St. Frideswide's, that it should henceforth be in the custody of one of the brethren appointed by the prior and two persons elected by the university, and that it should be devoted to its original charitable purpose, namely, a loan chest for the relief of needy scholars. When a loan was made from the chest, the borrower was always required to deposit something of sufficient value to secure the loan.³ This ordinance of 1240 is important as marking the beginning of a system of endowments which reached its greatest development in the English universities and which in the latter part of the century began to find expression in the foundation of the colleges.

The system of loan chests thus instituted by Grosseteste must have proven itself a useful charity at a time when exorbitant in-

¹Rashdall, I. 482.

²Munimenta academica, (R. S.), I. 4, 5.

³Ibid., I. 8-10. For regulations of a somewhat later date see *ibid.*, I. 11-13.

terest was demanded on loans made to scholars. At any rate the system is rapidly extended by the gifts of later benefactors.¹ In 1293, for example, the Countess of Warwick established a chest for the aid of poor scholars upon practically the same conditions as those outlined for the St. Frideswide chest.² Still others were founded from time to time, all of which rather closely followed the original plan of Bishop Grosseteste.³ It is said that by the fifteenth century there were in existence at Oxford at least twenty-four of these loan funds or chests.⁴ Thus for about two centuries the system of loan chests continued to develop side by side with the later and ultimately more important collegiate system.

Before taking up the rise of the colleges it is necessary to notice the position and character of the houses or halls occupied by the scholars at Oxford. Though the origin of these halls is unknown it may be said that they were unquestionably in existence before the documentary history of the university begins,⁵ and that for some time they represented the only provision made for the residence of the scholars with the exception of the houses founded by the religious orders. The larger part of the students had to take lodgings wherever they could find satisfactory accommodations. These halls were under the supervision of a principal who was practically independent of the university, though soon to be subjected to certain general regulations.⁶ It was the policy of the university during the thirteenth century and later to extend still further its control over the halls, either for purposes of discipline or for other reasons. Almost exclusive control was assumed as

¹ St. Frideswide's chest was also augmented by gifts. *Munimenta academica*, (R. S.), I. 10.

² *Ibid.*, I. 62-67.

³ *Ibid.*, I. 82-85, 95-99, 102-106.

⁴ *Ibid.*, I. xxxvii.

⁵ *Ibid.*, I. 1.

⁶ *Ibid.*, I. 13, 14, 16.

regards buildings once used as a school or hall.¹ From time to time statutes were adopted which extended in various ways the jurisdiction of the chancellor; he was given power under certain conditions to remove the principals,² he was permitted to dispense with the statutes of the halls or make new ones in their place,³ and, finally, in the early fourteenth century he was able to require a principal to report to him all students guilty of immorality or the disturbance of the peace.⁴ Ultimately the halls either disappeared or were incorporated into the collegiate system.

The monastic foundations of the thirteenth century are also worthy of mention in a study of the influences that preceded the development of the colleges at Oxford. Early in the century the Franciscan and Dominican friars appeared at Oxford and soon became very powerful in the university community. One of the most effective means employed by them in appealing for converts was through the establishment of large, spacious, and well organized houses or halls, the advantages of which offered a striking contrast to the comforts afforded by the ordinary hostels of the time.⁵ The energy and success of the mendicants finally spurred the older Benedictine order to renewed activity and rivalry, and, as a result, several Benedictine halls were founded towards the close of the century. In 1280 Rewley Abbey was established by the Cistercians for the support of fifteen of the brethren, and the movement was continued by the founding of Gloucester Hall in 1283 and Durham Hall some eight years later.⁶

¹ *Munimenta academica*, (R. S.), I. 14.

² *Ibid.*, I. 13.

³ *Ibid.*, II. 470.

⁴ *Ibid.*, I. 92, 93.

⁵ *Post*, 102.

⁶ For the founding of Rewley Abbey see *Annales monastici*, (R. S.), III. 287, Dugdale, V. 697, 699; for Gloucester Hall, *Annales monastici*, (R. S.), IV. 488, Dugdale, IV. 403, 407; for Durham Hall, *ibid.*, IV. 676.

In the early history of Oxford there are several instances of kings, nobles, or prelates, paying for the education of poor scholars at the university,¹ but of course this form of benefaction, which depended on the arbitrary will of some patron, was wanting in stability. As the maintenance of these poor scholars at the university soon came to be regarded as a very charitable and praiseworthy act, naturally a number of permanent endowments were made especially with this object in view. An equally common way of expressing one's piety in the Middle Ages was by the founding of a chantry for the support of a priest or priests whose duty it was to say masses for the founder's soul.² Both of these expressions of piety are found in the plan of Alan Basset, who died about the year 1243. According to the provisions of his will two hundred marks were left to the prior and monastery of Bicester, in consideration of which eight marks a year were to be paid by them for the support of two chaplains at Oxford, or wherever the university might in the future be removed. In addition to their duties as scholars in the university, the chaplains were required to say mass daily for the souls of Alan Basset and his wife. As this was primarily a chantry, it cannot be regarded as the foundation of a college, though the benefactor should be given credit for providing the first permanent endowment for the support of scholars at Oxford.³

It is only in its beginnings and not in actual priority of foundation that University College may claim precedence as the earliest of the English colleges. In 1249 William of Durham left the sum of three hundred and ten marks for the permanent maintenance of ten or more masters at the university. Though by 1263 several houses had been bought for the use of the beneficiaries, still there was no incorporation nor were provisions made

¹ Willard, 76, and notes.

² This idea was also very strongly present in the minds of the founders of the loan chests. See references given ante, 57, notes 1, 2, 3.

³ Wood, I. 232; Rashdall, II. 469; Lyte, 69, 70.

for any degree of self-government; as yet there was no college, but simply a fund or chest administered by the university authorities.¹ Not until 1280 were the earliest statutes drawn up, which, following to some extent the earlier statutes of Merton College, made the scholars to a limited degree a self-governing corporation, though the real power was still vested in the university.² But it should be noted that these statutes were imposed by the university itself and not by the founder; indeed it is very doubtful whether William of Durham ever intended that his alms should go to the support of an organized community with corporate rights. A fuller and rather detailed code was given to the college in 1292, which considerably extended the rights of self-government enjoyed by the scholars. This tendency was further emphasized by a later statute issued in 1311.³ These facts show the slow and gradual steps by which "the Great Hall of the University" attained corporate unity.

In the fulfillment of a penance imposed upon him about the year 1260 Sir John de Balliol, the father of the claimant to the Scottish crown, made provision for the perpetual support of a number of poor scholars at Oxford.⁴ It is said that scholars under this provision were certainly maintained at the university by 1266; thus Balliol College becomes in fact the oldest of the English college foundations.⁵ But the foundation was not put on a

¹ Loans were made from the fund and not repaid. *Munimenta academica*, (R. S.), II. 781. For a letter requesting a loan see *Monumenta franciscana*, (R. S.), 256, 257.

² *Munimenta academica*, (R. S.), II. 780-783.

³ *Ibid.*, I. 56-61, 87-91.

⁴ The cause of the penance is explained, Matthew Paris, *Chronica majora*, (R. S.), V. 528; he says Balliol "injuste vexaverat et enormiter dampnificaverat" certain churches in the north of England.

⁵ Rashdall, II. 473. However, this statement should be compared with Lyte, 85, where he says "there is no proof of their existence as a distinct community earlier than the year 1282, when a formal ordinance was issued for their government."

permanent basis until 1282; before that date the scholars were merely given a weekly allowance and no rights of self-government were granted them. In 1282, however, thirteen years after Balliol's death, a formal ordinance was drawn up for their government, under the direction of his widow Dervorguilla, who turned over certain property for the use of the scholars.¹ These statutes were perhaps intended only to confirm and supplement previous regulations and customs, and consequently they seem to be entirely uninfluenced by the earlier statutes of Merton. It has been pointed out that Balliol was an exception to the general type of English colleges in that it more nearly approached the earlier Parisian foundations and was obviously an imitation of them. In its earlier history it was not a land-owning corporation but simply a hall for scholars presided over by an elected principal. It also approached the Parisian system in the manner of its government and, more especially, in the fact that it was meant exclusively for students in the faculty of arts. Towards the middle of the next century it assumed more nearly the form and character of the other Oxford colleges.²

But it is with the more elaborate plan of Walter of Merton that we reach the real beginning and the basis of the distinctively English collegiate system. This new conception of his became of the greatest importance as it was the model for practically all other collegiate foundations and thus determined the future constitution of both of the English universities. Such being the importance of the foundation of Merton College, it is necessary that its history should be studied carefully and in some detail.

Walter de Merton was not a graduate of any university, though he may have been at one time a student in Oxford. His

¹Fourth report of the royal commission on historical manuscripts, 442, 446.

²For details as to the Balliol foundation see Lyte, 71, 72, 85-87; for constitutional significance, Rashdall, II. 472-474.

life was a successful one; he became chancellor of England for a time and later was made bishop of Rochester.¹ He took a strong interest in education, and it became his desire to secure for future scholars, more especially those of his own family, the advantages which had been denied him. So between the years 1263 and 1274 he elaborated a scheme for the support of his nephews and a sufficient number of other "capable young men," either at Oxford or elsewhere, under statutes which are known as the "Rule of Merton."² Probably it was in the year 1263 that he made over his estates in Surrey for the support of such a community of scholars, and in the following year he issued the first foundation charter of Merton College. By these statutes there was established at Malden in Surrey the "House of the Scholars of Merton," over which a warden was placed, together with bailiffs or stewards whose duty it was to manage the estates and to send allowances to the scholars.³ Out of these estates some twenty students were to be maintained in a hall or in lodgings at some university, preferably at Oxford but elsewhere if a mere flourishing studium generale should be founded.⁴ They were, however, established at Oxford from the first, and a second body of statutes in 1270 gave fuller regulations concerning their corporate life at that place. But in 1274 a newer and more detailed code, consisting of forty-one statutes, was formulated, which may be regarded as a final expression of Merton's ideas.

¹ Royal and other historical letters, (R. S.), 195, 196.

² Originally the scholars were all nephews of the founder, and as far as possible their number was to be filled up from the descendants of his parents. It seems that his plans grew upon him and gradually they became broader than was at first intended. See Rashdall, II. 482, for the original plan.

³ Brodrick, 18; Rashdall, II. 482, 483.

⁴ These statutes were formulated in the year of the secession to Northampton, 1264, and thus there was considerable uncertainty regarding the permanence of the university of Oxford. Merton provided for the possibility of removal from Oxford, even to Paris if necessary, and it is to be noted also that he bought property at Cambridge. Rashdall, II. 483.

One important change is to be found in the transference of the warden from Malden to Oxford and at the same time the institution of a more elaborate form of government for the community of scholars. The powers of government were vested in senior fellows and a warden elected by the senior fellows and charged especially with the care of the estates belonging to the corporation.¹ Other functions were distributed among various officials, most important of whom were the deans, the bursars, and the chaplains; the duties of the deans were mainly of a disciplinary character, while the bursars took charge of financial matters and the chaplains were responsible for the performance of services that were due to the Church. This more definite organization took place at about the time that the scholars moved from their hired quarters to the site which had been given to them by Merton as a permanent home, henceforward known as Merton Hall.²

The college or corporation of the scholars of Merton was soon provided with ample buildings; not only a good hall and chapel but also a kitchen and common dormitories were erected for their use. This chapel which was very prominent in Merton's scheme emphasized the ecclesiastical character of the foundation; but at the same time it established a certain tradition of architectural magnificence that was largely followed by the later English colleges.³

Though many monastic features were retained by Merton, such as a common head, freedom from external interference, a common table, and other provisions of a similar character, yet it is easy to see that this patron of education was unwilling to see the intellectual life of the age remain in the hands of the religious orders. Consequently, he resolves to combat the monastic idea by establishing a foundation for the training of the secular

¹ Rashdall, II. 485; Lyte, 76, 77.

² Rashdall, II. 483; Lyte, 75, 76.

³ Rashdall, II. 488-490.

clergy. It is as the first secular foundation that Merton College has exerted its greatest influence on the collegiate system of England. The primary duty of the scholars of Merton was to study, and to that end chaplains were provided to relieve them of the round of ceremonial duties. They were required to study the liberal arts and philosophy before beginning their work in theology, and they were encouraged in the view that they were preparing to go forth into the world. No ascetic obligations were imposed, the taking of the threefold monastic vow was discouraged, and though in a broad sense all the scholars were clerks they were not necessarily in holy orders. The influence and importance of such ideas as these may easily be imagined.¹

There are still other important provisions of this famous "Rule of Merton" that should be mentioned. It contains minute and rather elaborate regulations designed to control the various details of college life. Such regulation was very much needed in the Middle Ages, and when Merton's idea received wider application the result was a revolution in university life in general.² It should be noticed, also, that the scholars were given the power to make new statutes as needed, and that Merton was the first founder of a college to make provision for a gradually increasing number of scholars.³

The ultimate importance of the establishment of the early colleges can now be fully appreciated, and more especially the importance of the founding of Merton College. But there are still two general considerations concerning this movement that deserve to be emphasized. One of these is, that this working out of the problem of collegiate foundations in the thirteenth century prepared the way for the rapid development of the system in the

¹ Brodrick, 19, 20.

² Rashdall, II. 484.

³ On the Merton foundation, see Brodrick, 18-20, Lyte, 72-82, and especially Rashdall, II. 481-490; on the genesis of the idea of a secular college, Mullinger, *University of Cambridge*, 160-164.

fourteenth century.¹ In addition to that, it gave stability and permanence to the university by generally lessening and soon destroying the probability of a wholesale migration, such as the one that took place in 1209 or the one that was threatened at the time Walter of Merton issued his first statutes. The possession of property naturally became the strongest kind of tie to hold the university to a definite local habitation. The bearing of these facts upon the history of the university is of the utmost importance, for with this element of permanence definitely added the great work of the thirteenth century in the development of the universities was practically completed.

¹At Oxford, during the fourteenth century, Exeter, Oriel, Queens', Canterbury, and New College, were founded. Rashdall, II, 490-509.

CHAPTER III

THE RELATIONS BETWEEN THE UNIVERSITY AND THE BOROUGH OF OXFORD

The history of the borough of Oxford begins at least two centuries before any definite record occurs concerning the character of its schools. In the year 912 the authentic history of the town may be said to have begun, while nothing is known with certainty about the history of the schools there previous to the early twelfth century, when Robert Pullen came to Oxford to deliver lectures on the Scriptures. By the time of the rise of the university, that is, towards the close of the twelfth century, Oxford had developed into an important town with strong political and commercial interests and already possessed certain valuable borough privileges.

A brief outline of these chartered privileges is perhaps requisite for a thorough understanding of the struggle that arose between the borough and the university of Oxford. As early as the reign of Henry I the burgesses had received the right of holding the borough at fee-farm.¹ During the reign of Henry II they were granted a charter which conferred on them several important privileges, namely, the right to possess a gild merchant, freedom from tolls, the privilege of being impleaded only within the borough, in short practically the privileges possessed by the borough of London itself.² In the first year of John's reign this charter was confirmed, and the privileges of Oxford were definitely declared to be the same as those of London.³ In 1228 all

¹ Willard, 38.

² Merewether and Stephens, *The history of the boroughs and municipal corporations of the United Kingdom*, I. 446; Gross, *The gild merchant*, I. 14, II. 192, 386; Ballard, *Domesday boroughs*, 53.

³ Merewether and Stephens, I. 386, 446.

former privileges, laws, and customs, were again confirmed by Henry III. It should be noted, in addition, that these charters grant the burgesses the right of electing their town officers, the mayor and the bailiffs, and probably a borough coroner.¹ Later in the same reign Oxford received a further accession of privileges, and especially exemption from the interference of the sheriff and other royal officials in the local affairs of the borough.² Thus by the middle of the thirteenth century Oxford possessed a considerable degree of local autonomy.

In the present chapter, however, it becomes necessary to trace the steps by which a society of masters not only became independent of the burgesses but also gradually succeeded in overshadowing the importance of the borough and even to a great extent in dominating its government. The university was granted many privileges and immunities, but these were generally gained at the expense of the borough and the result was a practical crushing out of its municipal liberties. The full significance of this condition of affairs does not appear during the thirteenth century, but the trend of events is plain and it is easy to see what the outcome will be. In fact, the end of the first century of the history of the university will show that it is already becoming preëminent and strongly intrenched in power by the granting of privileges and through open usurpations. But the townsmen were not content to submit tamely and consequently the century is filled with contests that were due to the conflicting interests of these rival corporations. The details of this long struggle show clearly the steady advance of the university in privileges and in corporate power and importance.

The bearing of these general statements is well illustrated by important events during the years 1209 to 1214, events which really usher in the documentary period of the history of the uni-

¹ Willard, 39, 40.

² *Ibid.*, 39; Merewether and Stephens, I. 455 (under date 1265).

versity of Oxford. In 1209 a contest arose between the townsmen and the clerks over the killing of a woman by one of the latter, and a raid on the hostel of the offender resulted in the imprisonment and speedy execution of two or three of the scholars, though the real murderer had escaped. This summary punishment was probably countenanced by King John, who was then in the midst of his struggle with Pope Innocent III. The masters and scholars dispersed soon afterwards. Some went to the neighboring town of Reading, others went to the university of Paris, while still others migrated to the town of Cambridge. It is stated that some three thousand scholars decided to leave, and that not one scholar was left at Oxford.¹ After making allowance for the usual medieval exaggeration of numbers, the fact remains that this dispersion of 1209 was an event of considerable magnitude, and, when it is remembered that for several years the existence of the university was probably suspended, the serious nature of the crisis is at once apparent. In addition, the town of Oxford was probably placed under a stringent interdict, lasting for a little over four years. Finally, in 1213, on the arrival of a papal legate in England to receive the submission of King John, the burgesses of Oxford humbly besought and obtained ecclesiastical forgiveness and protection.² In the following year the legate issued his final sentence in an ordinance which is practically a charter of privileges for the university.

This Legatine Ordinance of 1214 is of great importance, therefore its provisions should be carefully noticed.³ In the first place, as a penance the offending townsmen, without shoes, hats, or cloaks, were required to go to the graves of the clerks who had been hanged and, accompanied by the whole commonalty of the

¹ Matthew Paris, *Chronica majora*, (R. S.), II. 526.

² For details of the dispersion see Matthew Paris, *Chronica majora*, (R. S.), II. 525, 526, 569; Flores historiarum, (R. S.), II. 138; *Annales monastici*, (R. S.), III. 32.

³ *Munimenta academica*, (R. S.), I. 1-4, gives this document in full.

town, to give them proper burial in a place especially chosen. It was also ordained that for ten years one half the rent for hostels and schools occupied by clerks should be remitted, and that for ten years more all rents should remain as they were before the secession. Further, the town was required to pay annually the sum of fifty-two shillings to be distributed among the poor scholars at Oxford and also to provide a feast for a hundred of them every year on St. Nicholas' day. Another provision was that victuals should be sold to scholars at reasonable prices. Still another obligation imposed upon the townsmen was that they should not only take an oath to observe the terms of the ordinance but that this oath was to be renewed every year by one hundred representative burgesses. The most important provision, however, was the one which began the practice of exempting the scholars from lay jurisdiction and is therefore a practical recognition of the important right of "benefit of clergy." The townsmen swore that if at any time they should arrest a clerk they would on demand give him up to the bishop of Lincoln or to his authorized representative.

It is worthy of note that the questions arising out of the troubles of 1209 were settled by the legate and the bishop without any interference of the royal authority, as the later tendency was on nearly all occasions to call in such outside authority. As soon as the townsmen made a formal submission to the severe terms imposed upon them, the interdict was removed and the clerks returned to Oxford.

But the peace did not last very long. In 1228 there was another quarrel between the clerks and the townsmen, followed, as was the case before, by an interdict upon the latter.¹ The prompt settlement of this dispute by the ecclesiastical authorities formed a striking contrast to the apathy shown at Paris during similar troubles in the following year, and, as a result, the reputation of

¹ *Annales monastici*, (R. S.), III. 109, 110.

Oxford as a place of safety for clerks led to the migration from Paris to Oxford of a considerable number of masters and scholars.¹ While this influx of scholars added considerably to the importance of the university, its effects were unfavorable as far as discipline is concerned, and there followed, in 1231, several royal writs which materially strengthened the power of the chancellor in his attempt to preserve the peace. In these writs the king ordered that the town authorities should permit the chancellor to use the town prison for refractory clerks, that when material force was needed the chancellor should apply to the bishop, who would summon the sheriff of the county to his assistance, and that all scholars should be expelled from Oxford who were not under a regular master.² This last provision, especially, is an important step towards the establishment of better discipline at Oxford.

But the attempt of the king to reconcile the clerks and the townsmen was a failure, for the very next year, 1232, some of the clerks were wounded in a riot. Three years later complaint was made that the burgesses of the town had broken the compact of 1214 regarding the price of victuals. There was further discord and even bloodshed in 1236, and it was with difficulty that the university was restored to its former state of quiet.³ The next disturbance arose in 1238 upon the occasion of a visit of the papal

¹ Riots in Paris between the civil authorities and the students resulted in a dispersion of the scholars in 1229. Many noted English masters left the university, such as Alande Beccles, Nicholas of Farnham, Rudolph of Maidenstone, and William of Durham. The scholars were finally recalled to Paris. Matthew Paris, *Chronica majora*, (R. S.), III. 166-169. Two years later, however, Henry III was able to boast of the number of foreign clerks at Oxford and Cambridge. Royal and other historical letters, (R. S.), I. 398.

² *Ibid.*, I. 396-398. These letters apply to Cambridge, but it is definitely stated that similar ones were sent to Oxford.

³ Matthew Paris, *Chronica majora*, (R. S.), III. 371, 372.

legate to Oxford. The chroniclers of the times have told in some detail the story as to how the tumult arose, and how, when the legate escaped from the scholars and made complaint to the king, the latter sent Earl Warrenne with troops to rescue the legate's followers. Oxford was then placed under an interdict and the legate excommunicated all the abettors of the offense, while one of the chief men, Odo, and a number of other clerks were imprisoned in the Castle of Wallingford near Oxford. Finally, however, the legate agreed to grant mercy if the scholars would humbly ask pardon of him; and when this was done the interdict was removed from the university.¹

These quarrels between laymen and clerks had now become a common occurrence, and, in 1240, some of the latter migrated to Cambridge, where a university had arisen in the earlier years of the century. It is said that three years later the removal of the university in its corporate capacity was considered not at all improbable.² Of course this would have been very easy to do because of poverty and the lack of buildings, which left the university practically independent of any particular place. As a consequence of this the scholars could always threaten to leave if abuses were not remedied or privileges granted to them. It is interesting to note just here that Pope Gregory IX, in 1231, had formally recognized the right to suspend lectures at Paris whenever university privileges were in danger, and it soon became plain at Oxford also that dispersion would soon follow the suspension of lectures, provided grievances were not removed.³ This is a fact that should be taken into account in the study of all the contests which preceded the definite establishment of the colleges, as it largely explains the continued success of the university in its encroachments upon the borough of Oxford.

¹ Matthew Paris, *Chronica majora*, (R. S.), III. 481-485; Flores historiarum, (R. S.), 224, 225; *Munimenta academica*, (R. S.), I. 5-7.

² Matthew Paris, *Chronica majora*, (R. S.), IV. 7, 8.

³ Rashdall, I. 339.

The history of the university of Oxford from the middle to the end of the thirteenth century and beyond is largely a record of continued struggles between town and gown, of royal interference, and of grants of privileges to the university. This history, however, is of the greatest constitutional importance. In 1244, for example, the first important encroachment by the chancellor of the university upon the rightful functions of the municipal government is found; consequently, this date is significant as marking a new stage in the development of the chancellor's jurisdiction.¹ Up to this time the borough of Oxford had been just as fully in possession of its rights and liberties as, for instance, the borough of London. But in 1244 there was a riot and an attack upon the Jewry because of some extortion practiced upon the clerks. Forty-five of the rioters were placed under arrest by the civil authorities and it was only at the urgent request of Robert Grosseteste, bishop of Lincoln, that they were transferred to the jurisdiction of the chancellor by order of King Henry III.² This clash between the two jurisdictions led two weeks later to the granting of a charter by the king which contained the germ of most of the later privileges and exemptions enjoyed by the clerks.

This charter has been with considerable truth called the Magna Charta of the university.³ By its provisions the Jews were forbidden to take more than two pence in the pound per week as interest on loans made to the scholars; and further, it says that, as long as it pleases the king, the royal prohibition shall not run in the causes of clerks arising out of the taxing or letting of houses and contracts for horses or victuals or for other movable things, but all such causes shall be decided before the chancellor of Oxford. This charter, therefore, gave the chancellor

¹ Merewether and Stephens, I. 448; Rashdall, II. 393.

² *Annales monastici*, (R. S.), IV. 91.

³ Lyte, 42, following Denifle.

jurisdiction over a very important class of cases, namely, all actions of debt, disputes about rents and prices, and other "contracts of movables," where one party to the suit was a clerk.¹

Three years later the burghers of Oxford quarrelled with Aymar de Lusignan, a member of the royal family, who was then studying at Oxford, and in consequence the liberties of the town were taken away. These liberties were soon restored, however, on the payment of a heavy fine, and no further results followed.²

Of much more importance was the contest that arose the following year on account of the murder by the townsmen of a Scotch scholar named Gilbert. The bailiffs of the town ignored the affair completely, and consequently the masters stopped their lectures and threatened to leave Oxford. At this juncture Bishop Grosseteste ordered his officials to publish a sentence of excommunication upon the murderers and to make diligent search for them with the aid of the burghers. But the masters wanted some guarantee of security for the future, and so, when they sent their proctors to the king, another charter of privileges was granted by him to the university.³

It was provided that future wrongs to the scholars should be inquired into by inquest juries of unprejudiced townsmen or of neighboring villagers and that if the burghers should kill, assault, or injure, any of the scholars, the whole commonalty of the town were to be held liable in their corporate capacity. It was further required that the mayor and bailiffs, upon their admission to office, should be compelled to take an oath in the presence of the chancellor or his deputy "that they would keep the liberties and customs of the university." Probably the most interesting provision is the one which required that every burgess should be

¹ Merewether and Stephens, I. 448; Rashdall, II. 393, 394. Merewether and Stephens' account is of considerable value on the various royal grants because it is largely made up of extracts from the documents.

² Lyte, 42, 43.

³ Robert Grosseteste, *Epistolae*, (R. S.), 437-439.

answerable for his family, after the manner of the old Anglo-Saxon laws of suretyship, so that if any of them should kill or injure a clerk he could produce the malefactor in order that justice might be done upon him according to the custom of the realm. In order to remove serious sources of contention two further clauses were enacted; one of these restricted the rate of interest to be taken from the scholars by the Jews to forty-three per cent, while the other secured to the chancellor and the proctors the right of attendance at the assay of bread and ale. The presence of the chancellor at the installation of the town officials and at the assay of bread and ale marks the first step towards the union of ecclesiastical and civil power in the hands of the chancellor of Oxford.¹

Another serious controversy between the clerks and the townsmen broke out in 1251, and again the masters closed the schools and made the demand that all clerks arrested by the town officials should be handed over to the custody of the chancellor. But it seems that the king was not prepared to go this far, and consequently he compromised the matter by ordering that the clerks guilty of comparatively light offenses should be given up to the chancellor, but that jurisdiction over the more serious crimes was to be reserved to the bishop of Lincoln. This compromise was not satisfactory to many of the clerks and it was with reluctance that lectures were resumed when they found that the king was resolute.²

Four years later this right of criminal jurisdiction was further extended and confirmed by the royal authority. By the

¹ *Munimenta academica*, (R. S.), II. 777-779; Merewether and Stephens, I. 449-451. By the assay or assize of bread and ale is meant the power of enforcing general ordinances which from time to time fixed the prices and quality of these articles for the market. Pollock and Maitland, *The history of english law*, I. 581, 582.

² *Annales monastici*, (R. S.), I. 147; *Monumenta franciscana*, (R. S.), I. 115-118.

charter of 1255, which aimed especially at the preservation of the peace in Oxford, it was provided that if a layman should inflict great injury on a clerk he was to be immediately imprisoned in the castle at Oxford and detained there until he satisfied the clerk, and that too at the will of the chancellor and the university. If a clerk injured a layman, however, he was to be imprisoned in the castle only until the chancellor demanded him. It was further provided in the charter that the assize of bread and ale should not be valid unless the chancellor or his deputy were summoned to attend, and, also, that a joint board should have power to assess the rents paid for inns, both of which functions were purely civil in their nature.¹ By the middle of the thirteenth century, therefore, the chancellor had added to his original spiritual jurisdiction extensive powers in both civil and criminal cases.²

The struggle between Henry III and the barons was not strongly felt at Oxford until the year 1264, and it may be said that the strife which arose in that year was probably due as much to the local animosities of the townsmen and the clerks as it was to the influence of that contest. It has already become apparent that the slightest provocation was enough to arouse these two classes against each other. Thus, when Prince Edward arrived at Oxford with an armed force and the civil authorities closed the gates of Oxford against him, trouble resulted between the scholars and the townsmen. This action of the latter shut off the scholars from their accustomed exercise in the fields of Beaumont just outside the city gates and, as soon as the Prince left for the Welsh border, they forced their way to these fields by hewing their

¹ *Munimenta academica*, (R. S.), II. 775, 776; Merewether and Stephens, I. 451-453; Stubbs, *Select charters*, 377, 378.

² An inquest jury declared in 1261 that the chancellor's jurisdiction also extended to the Jews, who, as chattles of the king, would have been exempt from the ordinary ecclesiastical jurisdiction. Rashdall, II. 394, note 4; Wood, I. 260, 325.

way through Smith Gate. The arrest of some of the offenders by the mayor and bailiffs and the intended seizure of others served as an invitation to the fray. A clerk gave the alarm to his fellows by ringing the bell of St. Mary's, and the scholars, leaving their dinner unfinished, rushed out to give battle. They wounded a good number of their foes and succeeded in putting them to flight, and then they proceeded to take revenge on the mayor and the bailiffs by pillaging their houses. Thus the clerks were completely successful, but as a result of the conflict it seemed as if they would lose their privileges and they decided to secede from Oxford to Northampton.¹

Northampton was already the seat of a new university formed by a migration of masters and scholars from Cambridge, and now it was temporarily augmented by this secession from Oxford.² But the seceders were soon induced to return by the promise that if they would keep the peace they should not be molested. Before they had all returned, however, a writ from the king ordered all the clerks to leave Oxford until after the session of parliament that was to be held there early in 1264. The excuse given for this arbitrary writ was that many of the king's followers were so untamed and fierce that trouble might arise, but probably the real reason for the dispersion of the university was to guard against treachery, as it was known that the university was fully in sympathy with the insurgent barons.³ Therefore, when Henry III ordered the clerks to disperse, many of them came out openly on the side of the barons and joined the enemies of the king at Northampton.

¹ This contest is described in some detail in *The metrical chronicle of Robert of Gloucester*, (R. S.), II. 11186-11232.

² Rashdall, II. 396, thinks it probable that a studium had been maintained at Northampton since 1238.

³ *Chronicles of the reigns of Edward I and Edward II*, (R. S.), I. 61; *Annales monastici*, (R. S.), II. 101, IV. 140, 141; *Walsingham, Ypodigma Neustrie*, (R. S.), 514.

As the parliament at Oxford did not result in an understanding between the king and the barons, Henry III immediately assembled his forces for the capture of Northampton. The town was closed against him and foremost among the defenders during the brief siege was a body of Oxford students, armed with bows and arrows, slings, and catapults. The king swore that he would hang every one of them, but when the town was taken a few days later, his friends dissuaded him from any such harsh measures.¹ Soon afterwards, when Simon de Montfort had defeated and captured the king at Lewes, he had writs issued in the king's name saying that as peace was now restored the chancellor and the university should return to Oxford with all their former privileges and immunities unimpaired, and by the middle of the summer of 1264 the university was again assembled at Oxford.²

The next year, that is, when Henry III regained power, an important exemption was granted to the clerks studying at the university. The king decreed "that as long as they should adhere to their studies and should make laudable proficiency in their learning they should not be put in any assizes, juries, or recognizances."³ The effect of this was of course to exempt the students from the interference of the sheriff and the mayor, an exemption which was a great step toward the freedom of the clerks from all temporal jurisdiction. This was followed by another royal grant in the same year which decreed that there should be an entire dispersion of the university at Northampton because its continued existence would injure the prosperity of the borough of Oxford.⁴ In 1268 the king also issued a confirmation of all the privileges previously enjoyed by the university.⁵ It is prob-

¹ Knighton, *Chronicon*, (R. S.), I. 242, 243.

² *Annales monastici*, (R. S.), IV. 141; Merewether and Stephens, I. 454, 455.

³ *Ibid.*, I. 455.

⁴ *Ibid.*, I. 455.

⁵ *Munimenta academica*, (R. S.), II. 777-779. This charter is a re-statement of that granted in 1238.

ably not going too far to see in this favorable attitude of the crown towards the early universities the real explanation of the fact that there never was a third university in England until comparatively recent times.¹

The great development of the university during the later thirteenth century merely intensified the contest between the townsmen and the clerks, and consequently hardly a year passed without some appeal to the king by one side or the other for a redress of grievances. It is not surprising, therefore, to find that the reign of Edward I marked a new and important era in the development of the privileges of the university, especially as the extent of the king's interest in the affairs of Oxford has been clearly shown. In 1274 a question of conflicting jurisdiction led the scholars to demand a new charter, and so, in the following year the king decreed that in all personal actions the burgesses and other municipal laity at Oxford might be sued before the chancellor of the university, and that no one should hinder this by the royal prohibition. Earlier grants of civil jurisdiction had probably applied only to cases in which a scholar was the defendant, but in this grant the king conferred upon the chancellor the cognizance of all personal actions wherein either party was a clerk. Consequently, this charter of 1275 did three important things—it limited to a considerable degree the jurisdiction of the borough of Oxford, it protected the members of the university

¹Several attempts were made to found such a university. The first of these was the secession from Oxford to Northampton in 1238 as a result of the quarrel with the papal legate. A second attempt at Northampton has just been noticed in connection with the troubles leading to the Barons' war. Salisbury also promised for a time to become the seat of a university. The most determined effort, however, was made at Stamford in 1334 as a result of the contest between the Northern and Southern "nations," and it was only by a strenuous exertion of the royal authority that this university was finally dispersed. Walsingham, *Ypodigma Neustriæ*, I. 141; Rashdall, II. 395-398.

from interference by the town officials, and finally, it gave the chancellor a good deal of control over the burgesses.¹

In other directions, also, the university made gains in privileges and immunities during the reign of Edward I. The immunity of halls, or other houses occupied by the students, from a variety of obligations, both civil and fiscal, was recognized by a jury as legal through the force of precedent.² Another important right gained by the university was the definite establishment, by a writ of Edward I in 1303, of the principle that when houses had once been occupied as halls or schools for the students they should never be rented to lay tenants as long as any master wanted them.³ The effect of such a provision upon rents is quite obvious.

Further evidence of the growing power of the university is to be found in the terms of settlement of a dispute that arose in 1288. In that year Robert de Wells, the king's bailiff, attempted to resist the extension of the chancellor's jurisdiction to a suburb of Oxford outside the north gate, which contained an open space that the students used as a playground. The bailiff had imprisoned a bedel and, on the bailiff's refusal to obey the citation of the chancellor, the latter passed sentence of excommunication upon him. The bailiff in turn retaliated upon several of the university officials, and then the matter was brought before the king in council. Here the rights of the university were upheld and the obnoxious bailiff was removed from office, a result that must have been due largely to a threat of dispersion if that official were sustained.⁴

Two years later this question of the relations between the

¹ Wood, I. 301,302; Merewether and Stephens, I. 497; Rashdall, II. 398, 399.

² Ibid., II. 399, quoting from Anthony à Wood.

³ The writ merely legalized a long-standing custom. For a clear statement of this principle see *Munimenta academica*, (R. S.), I. 14.

⁴ Ibid., I. 43-45.

university and the town was brought before the king and parliament and was there discussed. The situation, as it apparently stood in 1290, has been graphically put somewhat as follows; it was not now a question of protecting defenseless scholars against the townsmen but of protecting the citizens of Oxford against the chancellor's court and the hundreds of quarrelsome boys that came to the university.¹ In other words the jurisdiction of the chancellor had not only become extensive and powerful but also very vexatious, as was quite characteristic of the medieval ecclesiastical courts generally. The townsmen made many complaints against the chancellor, such as the charge that he set free prisoners arrested by the town officials, that he appropriated to himself victuals that had been confiscated, and that he imposed excessive fines upon imprisoned laymen. And on the other hand, the clerks complained of the unsanitary conditions in the borough, of the high prices charged for food and wine, and of the general rapacity of the townsmen. The discussion of many of these questions was brought out by the presentation to the king of a long list of grievances that the burgesses thought should be redressed. A comprehensive statement of these grievances is to be found in the royal award or charter of Edward I in 1290. As the provisions of this charter reveal very clearly the causes of the animosity between the town and the university, and as they serve as a good summary of a contest that had been going on practically throughout the thirteenth century, it will be well worth while to consider them in detail.²

As regards the complaint that the chancellor released persons arrested by the town officials, the king says in his award that the chancellor shall have jurisdiction in all cases where one party is a clerk, except in cases of homicide and mayhem. Also, in an-

¹ Rashdall, II. 400.

² The award is given in *Munimenta academica*, (R. S.), I. 46-56. See also Merewether and Stephens, I. 498-502; *Eclectic magazine*, CIX. 171, 172.

swer to the complaint that the chancellor was accustomed to appropriate victuals that were forfeited, he orders that neither the chancellor nor the mayor should be allowed to take the forfeitures, but that these two officials should have joint cognizance in all such matters. It was further said that all of the confiscated victuals were to go to the Hospital of St. John as alms from the king.

The king also passes censure on the imposition of exorbitant fines by the chancellor, and that official is ordered in the future to require only reasonable amends and security, as had been hitherto customary. The next grievance of the townsmen is a more interesting one. They claim that the term "clerk" is made so comprehensive that the chartered privileges of the university are extended to many that have no right to them. On this point, however, according to the charter, the university and the town were able to reach a mutual agreement, which declared that these privileges should extend only to the clerks and their families and servants and to the bedels, the parchment-makers, the illuminators, the writers, the barbers, and all others who wore the robes of the clerks. But if any of these should engage in merchandise, he was to be talliable along with the burgesses. Still another clause of the charter provided that the burgesses were not to be impeded in selling or renting their tenements as long as there was no collusion by which the clerks were turned out of their lodgings or their rents were raised. Further, as regards the abuse of the summons, the king decreed that the chancellor should give one day's notice when summoning resident freemen, but that "vagabond men" and disturbers of the peace might be called at the will of the chancellor.

The townsmen also complained that clerks often seized the horses and arms of strangers visiting Oxford on account of debts contracted elsewhere. In answer to this complaint, the king commands that the chancellor's jurisdiction shall extend only to cases where the debts were contracted in Oxford. It seems, too, that the chancellor was in the habit of requiring the delivery of

clerks who had seriously wounded laymen before it was known whether the injured person would live or die. For this the chancellor is rebuked by the king and enjoined to discharge no clerk from prison until the undoubted truth is known concerning the death or mayhem of the victim. The king also exhorts the chancellor to take care that he does full justice to all. The last complaint in this long list of grievances is concerned with the taxing or renting of houses. The townsmen insisted that the houses rented by scholars should be valued every seven years, while the university demanded the old five-year rule.¹ The contention of the burgesses is overruled, and it is ordered by the king that the taxing of the houses in Oxford shall be made every five years, as the charter of the king directs, by two clerks and two laymen sworn to do their duty honestly.

The above discussion covers the provisions of the royal award of 1290. Apparently the king attempted to weigh with care the conflicting claims of the rival parties and to give a judicial decision upon each of the questions in dispute, but in reality it seems that the charter is to a great extent little more than a definite and authoritative statement of the rights and privileges that had been gained by the university, though some of the extreme claims of the chancellor are not allowed. This award, however, gives one the impression that the university was guilty not only of continual encroachments but even of many actual usurpations, and that it had now grown fully as powerful as the municipal corporation, and, consequently, the latter strongly felt the need of the king's aid in attempting to withstand the power that had developed within its own limits.

It is to be noticed also that many of the disputed questions were due to the presence in Oxford of two separate jurisdictions, by nature distinct, yet constantly overlapping and conflicting with

¹This rule dated from a charter by Henry III in 1256. Merewether and Stephens, I. 453.

each other. It is, indeed, a good illustration of the medieval conflict between the state courts and the ecclesiastical courts, except that here the ecclesiastical jurisdiction prevailed and succeeded in perpetuating its immunities, or some of them at least, down to the present time.¹ The jurisdiction enjoyed by the university at the close of the thirteenth century was personal rather than local, extending to all the scholars within the borough of Oxford or the surrounding country and to their attendants as well. On the other hand, the jurisdiction of the mayor was confined strictly to the limits of the borough, and all that happened outside of those limits was under the jurisdiction of the sheriff of the county.²

The decision of the king and council did not result in restoring harmony at Oxford for very long. The records of the time are full of minor contests and brawls, in many of which lives were lost.³ In 1298 there was another violent outbreak at Oxford between the townsmen and gownsmen. A certain clerk, who had been arrested for taking away a mace from one of the bailiffs in a scuffle, was rescued on his way to the prison by some of his comrades, who then proceeded to break into the bailiff's house by way of revenge. The next day a band of armed clerks fought the townsmen at St. Mary's Church, wounding several of them and beating to death a trader who had come to Oxford to sell merchandise. The bailiff now demanded from the chancellor the imprisonment of these malefactors, but the latter rather insolently replied, "Chastise your laymen and we will chastise our clerks."⁴ There-

¹ Rashdall, II. 388 and appendix xxxii; Green, *Stray studies*, 287, 288.

² Merewether and Stephens, I. 504.

³ "There is probably not a single yard of ground in that part of the classic High Street that lies between S. Martin's and S. Mary's which has not, at one time or other, been stained with blood." Rashdall, II. 403. Further instances, not mentioned in the text may be found in *Annales monastici*, (R. S.), III. 286, and in *Trokelowe, Chronica et annales, Chronica monasterii S. Albani*, (R. S.), 59.

⁴ Lyte, 123.

upon the townsmen took matters in their own hands and arrested three of the clerks concerned in the disturbance at St. Mary's. Then, on the following day, they invaded the inns of the scholars to make further arrests. The clerks prepared for revenge. On the next morning bands of them marched through the streets in military array, while the bell of St. Martin's sounded the alarm to the townsmen and messengers were hurriedly sent into the country for recruits. It is said that three thousand clerks began the attack at different places, armed with bows and arrows, swords and bucklers, slings, and even stones. However, being repulsed at one place, they soon became discouraged and fled, mercilessly pursued by their enemies; and many of them were struck down in the streets, while others were imprisoned, or lashed with thongs, or goaded with iron spikes.

As a result of this conflict, both sides immediately made complaint to the king, each accusing the other of various crimes. The clerks claimed one thousand pounds as damages, while the townsmen claimed three thousand. The decision of the commission appointed to investigate the trouble was so favorable to the clerks that they abandoned the idea of a migration. The decision gave the clerks two hundred marks as damages, the two city bailiffs were deprived of their offices, certain laymen were imprisoned, and twelve of the more turbulent burgesses were banished from Oxford, and, finally, a general amnesty for all past offenses was agreed upon.¹

Similar contests continued, however, to disturb Oxford during the early fourteenth century, until the crisis was reached in the greatest contest of all in 1354. The result of this famous struggle was that the university finally gained a permanent triumph on practically all the long-standing questions of dispute, and henceforth the town was in reality dominated by the university.²

¹ Lyte, 122-125; *Annales monastici*, (R. S.), IV. 539; *Munimenta academica*, (R. S.), I. 67-69.

² *Ibid.*, I. 190-202; Wood, I. 456-468; Rashdall, II. 403-408.

In bringing to a conclusion this survey of the relations between the university and the town during the thirteenth century, it is necessary to notice briefly two very striking facts that stand out prominently in the history of the time. The first and most noticeable of these is the extent and importance of the central control over the local authorities.¹ This feature is well illustrated by the history of Oxford during the thirteenth century. Of course there were local officials and a system of local government, but the point is that the king did not hesitate to interfere with these whenever he thought it necessary to do so. Many of the regulations enforced by the royal authority, often on account of complaints from the scholars, were very minute in character and seem matters far removed from central control. For example, some of the regulations met with in following the history of the town and the university relate to such points as the cleaning of the streets and sidewalks, the slaughter of cattle within the limits of the town, the use of bad water for brewing and baking purposes, and other provisions of a similar character.²

The royal authority also kept a close watch over the scholars gathered together in Oxford, and the charters granted by the kings to the university are filled with provisions as minute as those mentioned above. But it was as an arbiter between the clerks and the townsmen that the central government is of most importance in university history. Disputes were constantly being referred to the king for settlement, not only by the clerks but often by the townsmen as well. It seems that the king was practically absolute in secular affairs and that both the town and the university were regarded as the creation of the royal power. As a general rule the kings upheld the university corporation against the borough of Oxford, and consequently the royal charters mark successive stages

¹ Rashdall, II. 389-391; Willard, 38.

² *Ibid.*, 46-61, gives a full discussion of royal interference in matters primarily local in character.

in the growth of the independence of the university and of its domination over the town. In fact, the rapid development of the power of the university as a corporation must be attributed in a considerable degree to this attitude of the central authority during the stormy period of the thirteenth century. And, finally, it is probably true, as has been said, that it was this attitude and this fostering care which prevented the rise of other universities in England during the Middle Ages.

Another important fact for consideration is the great development of the power of the chancellor as a result of the contests of the thirteenth century. When instituted in the early part of that century, the chancellorship meant no more than a spiritual jurisdiction over the scholars at Oxford, but as the university gained new liberties and privileges the chancellor, who had soon become its official head, was thereby exalted in power and influence. To his original spiritual jurisdiction he soon added a control over civil and criminal cases in which clerks were concerned. But in actual practice during the latter part of the century, this resulted in the gaining of considerable control over the burgesses by the chancellor, and finally his claims and usurpations became so great that Edward I and his council were obliged in their award to lay down certain restrictions on his power. This royal arbitration had no permanent results, however, and the authority of the chancellor continued to increase during the following century. The various influences noted in a previous chapter, together with many successive royal grants in favor of his office, resulted in giving the chancellor a strong and commanding position by the end of the thirteenth century, and already there were foreshadowings of the coming despotism of the university corporation with the chancellor at its head.

CHAPTER IV

THE UNIVERSITY OF OXFORD AND THE CHURCH

In tracing the history of the struggle between the university and the borough of Oxford it has been seen how the successive royal grants of privileges and immunities resulted finally in making the university practically independent of the town and even superior to it in actual power. During the thirteenth century there was also a contest going on between the university and the church authorities that was destined to have a somewhat similar result. But the struggle by which the university became free from ecclesiastical control was briefer in duration and less severe in character than the controversy with the town, though the victory was not in the end so decisive. Apparently the masters of Oxford did not have very much difficulty in dispensing with the control of their more immediate ecclesiastical superiors. But as this outward control by the church gradually slipped away, the rise of the mendicant orders and their growth in power and influence supplied an impulse strong enough to pervade the university and to control largely the character of its religious and intellectual activity. However, the friars were not able to dominate at Oxford as completely as they did at Paris, and just at the end of this period the masters were at length victorious in their struggle against the intrusion and threatened supremacy of these mendicant orders. The university constitution as it emerged from this dispute definitely reveals the main lines of development that were followed throughout its later history. The details of these various controversies will do much towards making clear the real position of the university of Oxford during the latter part of the thirteenth century.

The first subject for consideration is the steps by which the university gradually succeeded in throwing off the episcopal yoke. It is true that this movement was not completed until far into the fourteenth century, but, as was the case in the contest with the borough of Oxford, the result of the struggle was practically assured by the beginning of that century. As far as the somewhat scanty material will permit, a fairly full view of this controversy between the university and the authorities of the church can be obtained by following the course of the struggle to the end of the thirteenth century. As the close relations existing between the university and the church during the earlier part of the period have already been touched on to some extent in the previous chapters, it is merely necessary to give a brief summary of conclusions reached elsewhere.

The development of the universities in large part out of the cathedral or monastic schools is sufficient to account for their early ecclesiastical character and, according to the most acceptable theory of its development, the university at Oxford can hardly be regarded as an exception to this statement. It is a strong presumption, therefore, that the university was originally under the supervision of some local ecclesiastical authority, even though the evidence to support such a view is lacking. But if this view is the true one, then it is difficult to account for the independence of the masters at Oxford during the period just preceding the Legatine Ordinance of 1214. This point is probably the most difficult one in the theory that assigns to the university an ecclesiastical origin. As has been said already, nothing is definitely known concerning the relations existing between the university and the church authorities up to the year 1214 when the chancellorship was instituted. Possibly this early independence of the masters was due to the period of disorganization and confusion that naturally resulted from the bitter quarrel between King John and Pope Innocent III. Or, possibly, the university had, in some way not known, succeeded in

throwing off its dependence upon any local ecclesiastical authority. In either case it may be said that the restoration of ecclesiastical order resulted in bringing the masters and scholars definitely under the control of the bishop of Lincoln, and the establishment of the chancellorship was probably merely a mark of that subjection.¹

It is clear that the chancellor was at first regarded simply as the representative of the bishop of Lincoln with only such powers as the latter chose to delegate to him, but the fact that he soon came to be recognized as the head of the university shows a double character in his position that was bound to make itself felt. His jurisdiction was concurrent with that of the archdeacon, though as yet it was greatly limited in its scope, as Henry III for a time refused to permit the surrender of clerks guilty of serious crimes except upon the demand of the bishop or his official.² The powers of the chancellor had increased in various ways, however, and by the middle of the thirteenth century the period of the great development of the chancellorship had already begun.

But as long as Robert Grosseteste was bishop of Lincoln there was a period of unbroken harmony between the university and its ecclesiastical superior. Grosseteste had been connected with the university both as lecturer and as the "Rector of the Schools,"³ and upon his election to the episcopate in 1235 he still remained its strong friend and supporter.⁴ In 1238 he was foremost among the defenders of the scholars in their quarrel with the papal legate. Also, in 1244, it was his influence that prevailed upon the king to grant to the chancellor jurisdiction over the scholars concerned in the riot of that year. This policy of encouragement and protection continued until the death of Grosseteste in 1253.⁵

¹ *Munimenta academica*, (R. S.), I, 2.

² This is the case as late as 1251. *Monumenta franciscana*, (R. S.), I, 115.

³ *Ibid.*, I, 37; Rashdall, II, 355.

⁴ Robert Grosseteste, *Epistolae*, (R. S.), 346, 347.

⁵ Matthew Paris, *Chronica majora*, (R. S.), V, 407, in a passage on Grosseteste speaks of him as "instructor clericorum, sustentor scholarium."

Soon after Grosseteste's death Henry of Lexington was chosen to the see of Lincoln, and almost immediately the inevitable contest began between the university and the episcopal authority. Possibly it was because of this dispute that Pope Innocent IV in 1254 was induced to take the university under his special protection and to confirm the privileges and immunities that had been granted to it.¹ And, at the same time, the bishop of London and the bishop of Salisbury were appointed to watch over it and to guard its rights, liberties, and immunities, and especially to see that the university was not molested by the bishop of Lincoln.² It is doubtful, however, whether any instance can be pointed out of the exercise of these powers by the papal conservators, and consequently no court of conservation seems to have been established at Oxford.³ The pope also issued a bull which gave the masters and the scholars of Oxford exemption from any papal or legatine summons calling them outside the town to receive judgment on account of contracts made within its limits.⁴ In spite of this friendly attitude of the papacy towards the university, Henry of Lexington kept up his dispute until the year 1258. In March of that year, it is related that nine masters of arts made complaint to the king that the bishop of Lincoln was endeavoring to infringe the liberties of the scholars contrary to the statutes of the university.⁵ It was while pleading the cause of the university in this dispute that the chronicler Matthew Paris spoke to the king of the importance of Oxford as "the second school of the Church, or rather the very foundation of the Church." The dispute was settled by the king, but neither the exact point at issue nor the terms of the agreement are told. It seems fairly probable, however, that the

¹ *Munimenta academica*, (R. S.), I. 26, 28.

² *Ibid.*, I. 27, 29.

³ Rashdall, II. 419.

⁴ Lyte, 45.

⁵ Matthew Paris, *Chronica majora*, (R. S.), V. 618. The whole passage is interesting.

trouble arose out of the passage of a statute by the chancellor and regent masters concerning the punishment of the latter if they should violate the statutes of the university. As the episcopal authority was not consulted, the bishop of Lincoln naturally regarded such action as a direct infringement of his prerogative.¹

Nothing came of the dispute, however, except a formal statement by the university authorities that they had no desire to prejudice the said bishop or his successors or the church of Lincoln. But the chief interest in the controversy lies in the fact that the chancellor had given his assent to this statute, and thus it appears that this official, though theoretically a representative of the episcopal power, was in reality already identified with the interests of the university corporation. And, furthermore, it was only four years later that the chancellor and scholars on their own responsibility issued a sentence of excommunication against certain borough officials.²

Before proceeding to the later steps in the struggle for ecclesiastical independence, it will be well to notice some of the main causes that helped to make the chancellor free from the control of the bishop from whom he had derived his original authority. One of the most important of these causes was undoubtedly the fact that Lincoln, the seat of the bishopric, was one hundred and twenty miles from Oxford and consequently the bishop could not exercise a direct supervision over the affairs of the university and more especially over the acts of his chancellor. Another important reason is to be found in the successive grants of independent jurisdiction made to the chancellor by royal authority. Still other causes tending to the same end were the character of the chancellorship itself as the official head of a large and important community of scholars, the authority and prestige that were supposed to

¹ *Annales monastici*, (R. S.), I. 436; *Munimenta academica*, (R. S.), I. 30; *Rashdall*, II. 421.

² *Lyte*, 58, based upon *Close Roll*, 46 Henry III, m. 15 b.

belong to a medieval university, and the ease with which customs of a few years' standing were given the binding force of law. And, finally, after the chancellor had become practically independent of the distant bishop, his position was made even more secure by further grants of immunity from the pope himself. After a study of these various influences the rapid progress of the chancellor towards an independent authority is no longer surprising.¹

This movement continued during the episcopate of Richard of Gravesend who followed Henry of Lexington. He succeeded in maintaining peaceful relations with the masters and scholars, though probably only at the expense of his official prerogative. Towards the close of his episcopate, therefore, the privileges of the university were definitely confirmed by the archbishop of Canterbury and the chancellor's power of excommunication was not only recognized but declared effective throughout the realm.²

In 1280 Oliver Sutton became bishop of Lincoln. Upon his accession he became involved in a dispute with the university officials over the exercise of certain rights which the latter had been enjoying for some time. The privileges that the bishop called in question were the following: the right of scholars to cite their adversaries before the chancellor, the immunity of masters from all courts except the chancellor's in regard to contracts entered into within the university, the power of the chancellor to probate the wills of the scholars, and finally the right of the chancellor to punish scholars for their moral delinquencies. Besides the successful assertion of these privileges against the claims of the bishop, the university succeeded in establishing the appellate jurisdiction of the congregation of the university, with appeal to the bishop only as a last resort.³ These principles were successfully maintained largely because of the espousal of the cause of the university by

¹ Rashdall, II. 421.

² *Munimenta academica*, (R. S.), I. 39, 40.

³ *Ibid.*, I. 41-43.

the archbishop of Canterbury, and thus the bishop was practically compelled to yield on all the points of dispute. It may be said that from this time forward the jurisdiction of the chancellor was in reality independent of that of the bishop in all ordinary cases and that by the beginning of the fourteenth century the power of the university was probably somewhat in excess of that of the bishop.¹

The last phase of this struggle against ecclesiastical control related mainly to questions connected with the confirmation of the chancellor. Upon the resignation of Chancellor Robert Winchelsey in 1288, the question was raised as to whether his successor was bound to appear in person to seek the confirmation of the bishop. The regent masters had elected William of Kingscote and had asked through their messengers that he be confirmed according to precedent. When Bishop Sutton refused to confirm him by proxy all lectures were suspended for six months and many students left the university.² In 1290 a compromise was effected upon this question through the intervention of the royal authority, whereby it was agreed that the confirmation should be by proxy whenever the bishop was not within a reasonable distance of Oxford, but at other times the chancellor should present himself in person.³

After Sutton's death, the masters made an effort to gain from his successor still greater freedom in this matter of confirmation, but Bishop Dalderby objected to the mere sending of a delegate to represent the chancellor and also to a passage in the letter from the university which spoke of the selection of a chancellor as an "election" rather than as a "nomination." In the end, however, the bishop gave way and did not insist upon the appearance in person of the chancellor-elect.⁴ Later, in 1322, the university insisted

¹ Rashdall, II. 424.

² *Annales monastici*, (R. S.), IV. 316, 317.

³ *Ibid.*, IV. 318, 324.

⁴ Lyte, 128; Rashdall, II. 426.

upon its right under certain conditions to depose a chancellor.¹ Also, in 1345, there was a detailed agreement in regard to the respective rights and privileges of the chancellor and the arch-deacon.²

The struggle did not again become acute until 1350, when the confirmation of the chancellor-elect was delayed by the bishop and the case was finally carried on appeal to the papal authority at Rome. The decision of the pope recognized the right of the bishop to confirm the chancellor, but by further provisions it reduced this right to a mere formality, and, as a result, its exercise disappeared in actual practice.³ When finally, in 1368, this formal control over confirmation was dispensed with by authority of the pope, the process of throwing off the episcopal yoke was at last completed.⁴ From that time to the present the university of Oxford has enjoyed the power of electing and confirming its highest officer without regard to any superior authority whatever.

So far the present chapter has been concerned merely with the external relations existing between the university of Oxford and certain church officials who were brought into close contact with the university because of their ecclesiastical jurisdiction. It still remains to consider the closer and more vital relations which resulted from certain reforming movements within the church and their almost complete absorption of the religious and intellectual activity of the thirteenth century. These reforming tendencies found expression in the rise and growth of the various orders of friars, and, as the centers of educational activity proved to be a natural field for their missionary zeal and intellectual enthusiasm, this movement became of great importance in the history of the early universities as well as in that of the general religious life of

¹ *Munimenta academica*, (R. S.), I. 108.

² *Ibid.*, I. 148-152.

³ *Ibid.*, I. 168-170.

⁴ *Ibid.*, I. 228, 229.

the age. Though the purpose of this present study calls only for a consideration of the mendicant friars in their relation to the life and spirit, and the intellectual activities of thirteenth-century England, it should be kept in mind that the movement was widespread and that in all essential features it took practically the same direction in the other countries of Europe.¹

The two most famous and influential of these orders of mendicants were the Dominicans and the Franciscans. Both of these orders were established under the influence of a strong spirit of missionary zeal and of loyalty to the church. The older orders of Augustinian and Benedictine monks, concerned primarily with the salvation of the individual recluse, had become selfish and degenerate and held themselves aloof from the active life of the world, failing to minister to the charitable and religious needs of the men who lived at the beginning of the thirteenth century.² Apparently the useful and vitally influential period of the earlier monasticism had passed, and now the condition of society imperatively called for a revival of religious life and influences and a more evangelical spirit and aggressive organization of the forces of the church. It was to meet these conditions, therefore, that Dominic of Castile and Francis of Assisi set in motion the movement for reform, both of them later receiving the sanction of the pope.

Early in the thirteenth century the Franciscan order was established for the purpose of reviving in the world the practice of Christ and his apostles. These Franciscans or grey friars caught something of the character of the pious, ardent, and fanciful enthusiast from whom they took their name, and as their work lay especially among the poor and the outcast, they spoke of themselves humbly as the *fratres minores* and are frequently found referred

¹ Lea, *A history of the inquisition of the middle ages*, I. 297, 298; Milman, *History of latin christianity*, V. ix, x.

² Jessopp, *Coming of the friars*, 1-9; Robert Grosseteste, *Epistolae*, (R. S.), xxiii-xxvi.

to as the Minorites. The Dominican order, established in 1216, proposed to fight heresy and error and to bring the heathen to the true faith, and consequently their work was to be largely intellectual in character. The followers of Dominic were called preaching friars or black friars, and in their history they retained much of the character of their founder, namely, a learned, energetic, controversial, and dogmatic spirit, which made use of the inquisition whenever necessary.¹

Both orders were essentially missionary in spirit and both were filled with enthusiasm for the church, but at first their methods and ideals were slightly dissimilar. But these distinctions were not long maintained and soon a fierce rivalry sprang up between the two as to which should be preëminent in the universities and in the learning of the age. Almost immediately they began to settle in the various intellectual centers and to place in the schools teachers belonging to their own orders. This phase of their activity is well illustrated by a survey of the history of the friars in their relations with the university of Oxford.

The eagerness of the mendicant friars to seize upon university towns as centers for their work is to be attributed to their desire to influence the learning of the time and also to the more definite purpose of winning converts. In 1221, the same year of their first landing in England, the Dominicans made their appearance in Oxford, where they soon obtained land upon which to build a house and chapel. They settled in the Jewish quarter at first and soon began to make converts from among the Jews. A little later they connected themselves with the university through the establishment of schools of theology and philosophy.² The Franciscans, who reached England and Oxford in 1224,³ only three years later

¹ Jessopp, *Coming of the friars*, 9-28; Lea, *History of the inquisition*, I. 249-265; Stephens, *History of the english church*, II. 303-305.

² *Annales monastici*, (R. S.), IV. 413; Dugdale, VI. 1489, 1490.

³ *Annales monastici*, (R. S.), IV. 416; *Monumenta franciscana*, (R. S.), I. 5, 6, 9.

than their rivals, had the good fortune to enlist the sympathy and the services of the great churchman and scholar Robert Grosseteste. Seeing that a knowledge of theology was indispensable, especially in the combating of heresy, Agnellus of Pisa, the leader of the first band of Franciscans, established a school at Oxford and persuaded Master Grosseteste to lecture to the brethren.¹ Thus it appears that in the early period of enthusiasm and devotion the friars were well received by the university community and soon succeeded in establishing themselves as an important influence at Oxford.

In addition to this enthusiasm and devotion to lofty ideals, several other reasons may be assigned for the rapid growth of the mendicant orders and their strong influence in the schools of Oxford. It has been seen that in 1229 trouble arose at Paris which resulted in the dispersion of that university and a considerable accession of scholars and masters to Oxford. As most of these scholars and probably many of the masters were members of one or the other of the great mendicant orders the migration had as one result the increase of the influence and power of the friars at Oxford. Probably of more importance, especially as regards the Franciscans, was the friendship of Grosseteste, who until his death in 1253 remained a patron of the order. The influence of this remarkable man was so great that the period in which he lived has sometimes been called the "age of Grosseteste,"² and it was very fortunate for the friars as well as for the university that he occupied the see of Lincoln during the years from 1235 to 1253, as he proved himself on many occasions a valuable friend of both.

There is another reason that probably should be given in this connection as helping to explain the great success of the friars at Oxford, namely, the fact that during the period preceding the rise of the colleges they possessed spacious buildings which proved to

¹ *Monumenta franciscana*, (R. S.), I. 37.

² Mullinger, *University of Cambridge*, 84.

be very attractive to many of the poor scholars who had flocked to the schools, and who found the ordinary hostels rather undesirable places in which to live.¹

As a result of these various influences the mendicant orders grew very rapidly. In order to obtain more room, the Dominicans found it necessary, in 1245, to move from their quarters in the Jewish settlement to an island in the parish of St. Ebbe that had been given to them by Henry III.² Meanwhile, under able and famous teachers, the Franciscan school also grew in size and reputation until it came to be regarded as a worthy rival of the Dominican school at Paris.³ And, further, thirty-two years after their appearance in England the Franciscan order alone could boast of as many as forty-nine convents and twelve hundred and forty-two members.⁴ In addition to the Dominicans and Franciscans two other mendicant orders of some importance appeared in Oxford and were soon firmly established there; the Carmelites or white friars came in 1256 and acquired a house in the northern suburb, while in 1268 the Augustinian friars are found obtaining ground for a convent in Holywell.⁵ Other lesser orders also established themselves at Oxford, but they did not play any considerable part in the history of the university.⁶ Such facts as these undoubtedly bespeak the popularity and usefulness of the friars during the earlier years of their history.

It was not until 1252 or 1253 that the friars at Oxford were involved in any serious controversy with the university authorities, when it arose over the system of academic degrees, about which a

¹ Matthew Paris, a Benedictine, accuses them of extravagance and luxury as regards their buildings. *Chronica majora*, (R. S.), IV. 279, 280.

² Dugdale, VI. 1489; *Annales monastici*, (R. S.), IV. 94.

³ Dugdale, VI. 1526-1528. For the popularity and reputation of their leaders see *Monumenta franciscana*, (R. S.), I. 38, 39.

⁴ *Ibid.*, II. 10.

⁵ *Annales monastici*, (R. S.), IV. 113; Dugdale, VI. 1576.

⁶ *Ibid.*, VI. 1586, 1608, mentions the Crutched Friars and the Friars of the Sack.

fierce contest had been waging for some time at Paris.¹ This became acute in the early fourteenth century when the friars made a determined struggle against these university regulations. At Oxford, as at Paris, it was considered the duty of the university first of all to give the students a general or liberal education; consequently the course in arts was the essential feature, and it was only after the mastery of the trivium and the quadrivium that a scholar passed into the faculties of law or theology. As the Franciscans did not care for some of the prescribed studies and took them only because they were necessary in obtaining the degree of master or of doctor of theology, it is not surprising that an attempt was soon made by them to avoid the preparation required for the higher degrees. In 1252, Thomas of York, a Franciscan friar, came forward as a candidate for a degree in theology without having previously fulfilled the requirements for the degree in arts. On the one hand the university authorities recognized the fact that the candidate was well qualified to teach, but on the other hand they declared that all the precedents were undoubtedly against him. In spite of the able pleading of Adam Marsh, the pupil and friend of Grosseteste, the decision went against his order and it was embodied in the famous statute of 1252 concerning graduation in arts.²

The complete victory of the masters of arts clearly shows something of a spirit of opposition to the threatened supremacy of the friars. In the first place, they had the troubled condition of affairs at Paris as a warning against making any distinction between the friars and the other students.³ Furthermore, in the provisions

¹ See Rashdall, II. 378, note 2, on the date of this controversy at Oxford.

² *Monumenta franciscana*, (R. S.), I. 338, 346-348; *Munimenta academica*, (R. S.), I. 25.

³ For the details of the struggle at Paris see Rashdall, I. 369-392; Matthew Paris, *Chronica majora*, (R. S.), V. 416, 417, 506, 507, 528; *Annales monastici*, (R. S.), I. 347, 348, 430-434.

requiring an inceptor in theology to have previously lectured as a bachelor and forbidding graduation in theology to any one who was not already a master, the university intended not only to limit the number of friars with the higher degrees but also to secure control over them when they were graduated in theology, as every master of arts had to swear obedience to the statutes and other regulations of the university.¹ This statute of 1252, however, was not primarily inspired by hostility to the mendicant orders as such, as was the case with a similar statute passed at Paris the year before, but it was due rather to a desire on the part of the university to uphold the authority and the position of the faculty of arts. The friars, however, were strongly opposed to graduation in the secular branches of learning, and possibly it was only a liberal use of the dispensing power of the chancellor and regents that maintained the friendly relations between the university and the friars after the passing of such a statute.²

Though further conflict between cowl and gown was apparently inevitable, the struggle did not come until the early part of the fourteenth century, and though somewhat beyond the strict limits of this survey it may be well to notice the final struggle over the question of graduation in arts, and the way in which it arose. During the closing years of the thirteenth century the Dominicans were causing a good deal of trouble by their ambitious schemes, their insistence upon special rights and immunities, and their claim to fill the highest and most influential offices in the schools of Oxford, while still remaining independent of the jurisdiction of the university. After gaining the victory at Paris as the result of their long struggle for recognition and after meeting with some success at Cambridge in 1303, the Dominicans next attacked the Oxford statute of 1252. The university was fully determined to uphold its

¹ Rashdall, II. 378. The oath is given in *Munimenta academica*, (R. S.), II. 374-376.

² Rashdall, II. 379.

own rights and privileges and the answer to the Dominicans is to be found in a series of statutes directed in part at least against the mendicant orders.¹ In order to carry out such a legislative programme a great constitutional change was made at this time; it was enacted that the regents in two faculties together with a majority of the non-regents should have power to pass permanent statutes binding on the whole university. And it was in this way that at least two of the statutes against the friars were carried through by the faculties of arts and medicine.²

The struggle continued from 1303 to 1320, but the details cannot be given here. Upon appeal to Rome a board of arbitrators was formed with power to give a binding decision, and, in the award of 1313, the university was upheld upon practically all points of dispute and the statutes against the mendicants were specifically confirmed. This award received the solemn ratification of the king early in 1314; but it was not until 1320 that the friars finally submitted. Unlike Paris, therefore, the university of Oxford emerged from the struggle completely victorious, and its constitution now revealed with definiteness the main lines of its future development.³ Thus, by its triumph over the episcopal authority and over the mendicant orders of St. Dominic and St. Francis, as well as by its victory over the borough of Oxford, the university paved the way for its later independent and somewhat despotic position as a sort of imperium in imperio.

With the foregoing in mind the influence of the Dominicans and the Franciscans upon the life and development of the university of Oxford during the thirteenth century can be better appreciated. In the first place, it may be stated that after the coming of the mendicant orders the schools of Oxford had risen rapidly in

¹ *Munimenta academica* (R. S.), II. 388-395.

² Rashdall, II. 381, 382.

³ Lyte, 105-112, gives a full and interesting account of the whole controversy; on the constitutional side see Rashdall, II. 380-384, 386.

importance and celebrity. It was not long until the friars were the undoubted leaders in the life and activities of the university, and by the middle of the century the Franciscans especially were the greatest influence in the intellectual movements of the age. It has been pointed out already that the Franciscan school at Oxford was regarded as a worthy rival of the best schools at Paris. Indeed, this intellectual preëminence of the friars, together with the European importance of a number of their ablest representatives, forms one of the most striking features in the history of the university during the thirteenth century and deserves considerable emphasis in that history.

It is enough to say here, however, that the distinction of these mendicant orders in the schools of Oxford acted as a spur to greater activity on the part of their monastic and secular rivals. As a result of this stimulating influence the older monastic orders showed considerable activity and progress along certain lines during the latter part of the century. But of much more importance was the influence of the attractive houses of the friars and the advantages of their well-regulated life therein, upon the rise of the Oxford colleges at this time. These houses were imitated and modified somewhat in order to suit the needs of those who did not desire to attach themselves to a lasting "rule," the first of these adaptations being probably that by John Balliol and his wife Der-vorguilla. And finally, as embodied in and extended by the famous "Rule of Merton," this idea of a secular foundation was firmly established at Oxford and became the basis of the later English collegiate system.¹

It would be a great mistake, however, to think that the success of the mendicants and their aggressive activity did not meet with a good deal of opposition, especially after they had lost their early humility and devotion in an ambitious struggle for power and supremacy. Of course they had from the first to meet the hostility

¹ Traill, *Social England*, I. 434.

of the older orders who saw in them very formidable rivals, and towards whom, according to the Benedictine historian of the time, they were almost unbearably aggressive and arrogant.¹ To this historian, also, the controversy that arose between the two principal mendicant orders in 1243 was a great and scandalous strife full of peril to the entire church inasmuch as it was between men of learning and scholars and seemed to forbode some great and imminent judgment.² These passages are interesting not only as pointing out certain characteristics of the friars but also as revealing the jealousy and hatred of the regular orders towards them because of their success, their wealth, their fine buildings, and their remarkable influence. The mendicant orders also may have made a great mistake when, as a result of their zeal for the church, they permitted themselves to become the agents of papal extortion in England.³ Though these acts must have done much to destroy the early popularity of the friars, it is nevertheless true that they maintained their hold upon the common people and upon the universities throughout the period under consideration, and that they were one of the most vital and helpful influences of the century.⁴

¹ Matthew Paris, *Chronica majora*, (R. S.), III. 287, 332, 333, IV. 511, 514; Dugdale, III. 106.

² Matthew Paris, *Chronica majora*, (R. S.), IV. 279.

³ *Ibid.*, IV. 612, 634, V. 67, 195.

⁴ Mullinger, University of Cambridge, 146-153, severely criticises the friars. One cannot help feeling, however, that his entire acceptance of the statements in Matthew Paris hardly leads to a fair estimate, at least as far as the thirteenth century is concerned. For the other side of the question see Robert Grosseteste, *Epistolae*, (R. S.), xxii. 120, 180; *Monumenta franciscana*, (R. S.), I. lxii. II. xi.

CHAPTER V

THE UNIVERSITY OF CAMBRIDGE DURING THE THIRTEENTH CENTURY

In the preceding chapters the attention has been concentrated upon the points of chief importance in the early history of the university of Oxford and upon the character and extent of its activity up to the beginning of the fourteenth century. It is now proposed to examine this same educational movement and the influences underlying it with reference to the second great English university of the thirteenth century. This survey of the university of Cambridge, however, must necessarily be brief and general in character, first, because of the fact that during the period under consideration this university occupied a position of comparative insignificance, and secondly, because of the great obscurity that surrounds its early history, due probably in large part to a series of misfortunes which resulted in the destruction of its archives. Though incomplete and unsatisfactory in details, nevertheless the present account will receive considerable support from the presumptive evidence furnished by the history of similar movements in connection with the university of Oxford. Indeed, it would seem from the evidence at hand that all of the essential features in the early history and constitutional development of the older university are to be found reproduced in the career of the less favored university at Cambridge,¹ and consequently the meagerness of the details will not be so great a misfortune as it seemed to be at first sight.

And yet, it is this absence of definite knowledge that has furnished the opportunity for a most remarkable exercise of the inventive faculty on the part of the earlier historians of the university of Cambridge. In the effort to prove a great antiquity for

¹ Rashdall, II. 553.

their chosen university, the champions of Cambridge have not hesitated to seek its origin in times considerably earlier even than the reign of Alfred the Great. Some extreme writers have argued that it owes its origin or "restoration" to a Spanish prince named Cantabar, who is said to have lived at a very early date.¹ Others attribute its foundation to King Arthur and point confidently to a charter of his which bears the date 531 A. D.² But the more conservative of the early partisans have regarded Sigebert as the real founder of the university in the year 631 A. D., though, as one such historian remarks, Cambridge may have been a seat of learning for several centuries before that date.³ This same historian further tells us that in 915 King Edward, "remembering the pious example of his father Alfred in founding Oxford, began to repair and restore the university of Cambridge. For the Danes . . . had banished all learning from that place; Apollo's harp being silenced by Mars his drum: till this king's bounty brought learning back again thither, as by his following charter may appear."⁴

A more important and more detailed theory was based upon a passage in the continuation of the Ingulphine chronicle which has been proven to be an unquestionable forgery.⁵ According to this theory, the nucleus of the university was a settlement of four Croyland monks at Cambridge early in the twelfth century.⁶ Such stories as these afford one a good idea of the real character of that mythical history of Cambridge university which was for a long time accepted as genuine.

¹ Carter, *History of the university of Cambridge*, I.

² Dyer, *Privileges of the university of Cambridge*, I. 55, 56, gives this supposed charter.

³ Fuller, *Church history of Britain*, I. 187, 188. His arguments, *ibid.*, I. 188-195 are interesting. See also Bede's ecclesiastical history of the english people, III. 18.

⁴ Fuller, *Church history*, I. 323. This supposed charter is given, *ibid.*, 323, 324.

⁵ Rashdall, II. 345.

⁶ Fuller, *History of the university of Cambridge*, 9, 10.

As was the case with Oxford, probably the best way to approach the question of the origin and early history of the studium generale that arose at Cambridge is through a brief account of the borough of Cambridge during the preacademic period. Such an account goes back to the early history of Britain, for it would seem that there was at least a fortress at Cambridge previous to the coming of the Roman legions, and that the place later became of some importance as the point of intersection of two Roman roads.¹ It is mentioned several times in the Anglo-Saxon Chronicle,² and, at the time of Domesday survey, it contained probably as many as four hundred houses. Twenty-seven of these houses, however, were torn down to make way for a Norman castle which was erected at that place by order of William the Conqueror.³ The presence of this castle not only added to the importance of Cambridge, but it also gave greater security to the town and the neighboring country, and under its protection the Church of St. Giles, founded by the Norman sheriff Picot in 1092, became a center for the activity of a small body of secular canons. In 1112 the canons of St. Giles removed to the south bank of the river, near the ancient Church of St. Benet, and took up their abode in the new priory at Barnwell.⁴ As the secular canons often took an active part in education it is reasonable to infer that some work of that kind was done by them at Cambridge, and this is rendered still more probable when we recall the activity of the Benedictine schools at Oxford and at many towns on the continent. In the year 1133 the nunnery of St. Rhadagund was founded,⁵ which later was destined to become Jesus College; two years later an

¹ Mullinger, *History of the university of Cambridge*, 12; Jessopp, *Coming of the friars*, 267.

² Anglo-Saxon chronicle, (R. S.), I. 144, 145, 195, 264, 265.

³ Ballard, *Domesday boroughs*, 67.

⁴ Dugdale, VI. 83, 86; Mullinger, *History of the university of Cambridge*, 13, 14.

⁵ Dugdale, IV. 215, 216.

Augustinian hospital dedicated to St. John, was established by a burgess of the town, which also became at a later time important in the history of the colleges of Cambridge.¹

Another important influence in early Cambridge is to be found in the monastery of Ely, fourteen miles distant from the town, which was a wealthy and important foundation even before the time of the Norman conquest. It became the seat of a bishopric in 1108,² and, as Cambridge was under the jurisdiction of its bishop, the assertion of his ecclesiastical authority later developed into an important factor in the history of the university. It is also important to note that this ecclesiastical superior was far enough removed from Cambridge that his power did not completely overshadow the rising studium generale of that town during the thirteenth century, though he continued for a long time to be of considerable influence in its history.

By the middle of the thirteenth century Cambridge possessed practically the same borough privileges that were enjoyed by Oxford. Some of these privileges, however, were of a somewhat later date as, for instance, the possession of the borough at fee-farm and the right of gild merchant, both of which were gained early in the reign of John.³ On the other hand Cambridge actually antedated Oxford by a year in its charter of exemption from the interference of the sheriff in local affairs, and also unquestionably received the right of electing a town coroner.⁴

Such are the main features of the preacademic period, and, though they are very indefinite as regards educational advantages or other details, still it is from such data that the origin of the university of Cambridge must be determined.⁵

¹ Mullinger, *History of the university of Cambridge*, 15.

² Dugdale, I. 462.

³ Maitland and Bateson, *The charters of the borough of Cambridge*, 5, 7, 9; Gross, *Gild merchant*, I. 10, II. 357, 358.

⁴ Maitland and Bateson, 16, 17.

⁵ Freeman, *English towns and districts*, 238-248; Mullinger, *History of the university of Cambridge*, 12-16. The fen country is described in some detail by Mullinger, *University of Cambridge*, 329-337.

Once more the problem comes up for solution, Did the studium generale at Cambridge develop out of previous conditions or was it due to some external influence entirely independent of those conditions? As was the case in the history of Oxford, two theories are given to explain its origin, one of them upholding the idea of a gradual and natural development, while the other refuses to recognize any evidence for the existence of a university at Cambridge previous to the migration from Oxford in 1209. It is quite useless, of course, to repeat the arguments by which these two opposing views are supported, for the situation is practically the same in all important respects as the one confronted in a previous chapter, except that in this case the evidence is even more scanty and indefinite. On the one hand it has been said that the priory of Barnwell was at least a mile distant from what was later School Street and that nothing whatever is heard of schools at Barnwell or elsewhere before the migration of 1209. Of course the ordinary schools of the twelfth century must have existed there, but to seek in them the nucleus of a university is entirely out of the question.¹ On the other hand, the argument against this theory runs as follows: It seems probable that the university resulted from the efforts of the monks of Ely to make Cambridge an important center of education; as the school prospered the canons of St. Giles lent their aid in the movement, and at length the university became a reality, just as Paris and Bologna became realities.² If a studium had not as yet been formed at Cambridge, then how is the fact to be explained that the scholars dispersed from Oxford went to that place rather than to Canterbury, or some other important English town?³

While the evidence is so slight that a choice appears to be little more than arbitrary, still the theory of gradual evolution

¹ Rashdall, II. 545, 546.

² Mullinger, *University of Cambridge*, 333, 334.

³ See Jessopp, *Coming of the friars*, 273.

seems to be the more natural, and undoubtedly it gains considerable strength from the somewhat analogous cases of Oxford and of the continental universities of Paris and Bologna. However, the period during which a society of masters and scholars was developed cannot be determined with any certainty, though it seems that the process must have been at least partially completed by the time of the migration from Oxford, and that this movement merely hastened its development.

The history of the Oxford dispersion of 1209 and the consequent migration to Cambridge has already been given. Such a migration must have resulted in an increased activity in the schools at Cambridge, but this was probably short-lived as nothing more of a very definite nature is known concerning a studium there until 1229. Probably this interval was characterized by a somewhat precarious existence on the part of the university, especially after the return of the dispersed scholars to Oxford in 1214. But that the university did continue to exist is practically proven by a letter of Henry III in regard to the expulsion of those clerks who continued to uphold Prince Louis of France.¹ In addition, the fact that the Franciscans, almost immediately after their arrival in England, established themselves at Cambridge may be taken as presumptive evidence of its reputation as a seat of learning.

It has been mentioned already that the years 1228-9 were marked by the dispersion of the university of Paris and by the migration of many of its students and some of its masters to England upon the invitation of King Henry III.² Undoubtedly Cambridge was one of the chief places to which they repaired in order to continue their studies, thus showing again that its schools were of some prominence during the earlier part of the century. In fact, a royal writ issued only two years later makes the statement

¹ Fuller, *History of the university of Cambridge*, 20, note 1.

² Documents relating to the university of Cambridge, I. 1; Dyer, *Privileges*, I. 5.

that "a multitude of clerks from divers parts as well on this side as on the other side of the sea," were to be found there.¹ It is not until after this migration of 1229 that definite traces of a distinct academical organization of the scholars at Cambridge can be pointed to in the records of the time.

One important result of this influx of scholars from Paris is to be found in the period of disorder and lawlessness that immediately followed their arrival.² Indeed, the need for a more stringent discipline was so great that the royal authority now felt called upon to interfere in the affairs of the university, and the result is seen in a series of royal letters or writs issued in 1231 which aimed at the restoration and preservation of the peace. For one thing, both the sheriff and the bishop were instructed to exert their authority in order to help maintain a proper discipline in the university. It is also decreed that the chancellor shall have power to signify to the bishop at Ely all "rebellious clerks who would not be chastized by the chancellor and masters."³ It is this provision that reveals the definite existence of a corporation of scholars and masters at this great center of higher education in England. Furthermore, the provision also shows the important fact that the chancellorship has not only been instituted but that it carried with it considerable power and prestige in the actual government of the university. Another royal writ commanded that every scholar should within fifteen days place himself under the supervision of some master of arts, and if anyone failed to do so he was to be expelled from Cambridge by the sheriff.⁴ This provision came to be

¹ Royal and other historical letters, (R. S.), I. 398.

² They "lived under no discipline, having no Tutor (saving him who teacheth all mischief)," Fuller, *History of the university of Cambridge*, 23.

³ Royal and other historical letters, (R. S.), I. 396, 397; Mullinger, *History of the university of Cambridge*, 17.

⁴ Royal and other historical letters, (R. S.), I. 397, 398.

recognized as one of the statutes of the university and later, in 1276, received explicit confirmation from the bishop of Ely.¹ Such a regulation as this must have had some result in checking disorder and in creating to a considerable degree a feeling of responsibility to the university authorities. The last of the writs of 1231 was concerned with the "taxation" or renting of halls by the clerks.² This royal recognition of a university or corporation at Cambridge was followed in 1233 by papal recognition and by a grant from the pope of certain privileges to the scholars.³ By this time, therefore, the university is well established and has begun to show the main lines of development that had been followed by the university of Oxford since the troubles of 1209 to 1214.

The growth of the university was now more rapid. In 1240 there was another accession of scholars at Cambridge due to the fact of a second migration from Oxford in that year, and at the same time the university received a grant of certain privileges from Henry III.⁴ The presence of growing numbers may also be readily inferred from the prominence of feuds between the townsmen and the students towards the middle of the century.

The causes leading to these struggles at Cambridge were in all probability the same as those explaining similar movements at Oxford. As early as 1244 there was trouble between the burgesses and the scholars.⁵ Of more importance, however, was the struggle that arose in 1249 as a result of some trivial dispute. This latter contest was characterized by great disorder, fighting, plundering, and even murder, and, as the chronicler relates, the clamor was so great that it soon reached the ears of the king.⁶ Just ten years later there was another disturbance at the university which seems

¹ Fuller, *History of the university of Cambridge*, 49, 50.

² Royal and other historical letters, (R. S.), I. 398, 399.

³ Rashdall, II. 547.

⁴ Matthew Paris, *Chronica majora*, (R. S.), IV. 8, 9.

⁵ *Annales monastici*, (R. S.), I. 134.

⁶ Matthew Paris, *Chronica majora*, (R. S.), V. 67.

to begin the period of turbulence that preceded the Barons' War, and for the next few years conditions were very unsettled.¹ As far as known these contests, with the exception of that of 1261, had no important influence upon the development of the university.

Still another evidence of increasing numbers at Cambridge is to be found in the adoption of the organization of the "nations." On the continent there were usually four "nations," but at Oxford there had been developed a modified form of this continental organization comprising only two divisions, namely, a Northern and a Southern nation. As Cambridge closely followed Oxford in this respect, it may be said that this two-fold division is a distinctive characteristic of the English universities. The adoption of this organization at Cambridge led to contests similar to those which took place at Oxford. For example, a controversy between two students representing the opposing nations led in 1261 to a general encounter between the northerners and the southerners, in which even the townsmen took part on one side or the other. The usual results of a medieval contest followed; various outrages were committed, houses were plundered, and, in the course of the struggle, the records of the university were destroyed.² Some of the ring-leaders in this disturbance were indicted and found guilty, but they were pardoned by the king.³ It is this destruction of the university archives, together with similar acts of violence in 1322 and in 1381, that explains in large part the obscurity surrounding the development of the Cambridge studium generale during the thirteenth century and to a lesser degree during the fourteenth century as well. The documentary history of the university previous to 1381 is almost a blank, and, as a result, no complete picture of

¹ Matthew Paris, *Chronica majora*, (R. S.), V. 743; Dyer, *Privileges*, I. 6; Royal and other historical letters, (R. S.), I. 165, 166.

² Mullinger, *History of the university of Cambridge*, 18, 19.

³ The letter of pardon is given in Fuller, *History of the university of Cambridge*, 29, 30.

its constitution can be given previous to the fifteenth century.¹

One consequence of the outbreak of 1261 was the migration of a body of students to Northampton and an attempt to found at that place another university. These scholars were joined in 1264 by a considerable number of the students who were driven from Oxford by Henry III, and a royal license was obtained for a third *studium generale* in England, but English conservatism and the desire to protect Oxford soon led to a special mandate by the royal authority ordering all students at Northampton to disperse to their respective universities.² Furthermore, every inceptor in every faculty of each university was required to take an oath that he would not resort to any English university except those of Oxford and Cambridge.³ Thus, while the continental universities were often seriously weakened by secessions of students and of masters, the universities of England were constantly upheld by the royal authority and remained until the nineteenth century the only permanent centers of higher instruction in the country.

It is quite reasonable to suppose that the contests between the scholars and the townsmen continued throughout the latter part of the thirteenth century, but the material is not at hand for a history of the struggle. It is known, however, that the feeling between the two parties was extremely bitter and that in 1270 the royal influence was exerted to bring about an agreement between them for the better keeping of the peace. It was arranged that a commission of thirteen scholars—five from England, three from Scotland, two from Wales, and three from Ireland—should see that the peace was faithfully kept between the town and the uni-

The descriptions given in Mullinger, *University of Cambridge*, 140-145, and Rashdall, II. 554-557, both apply primarily to the fifteenth century. They are apparently based on the *Statuta Antiqua*, Documents relating to the university of Cambridge, I. 308-453.

² *Ibid.*, I. 2; Fuller, *History of the university of Cambridge*, 31, 32.

³ *Munimenta academica*, (R. S.), II. 375.

versity.¹ It is impossible to believe, however, that any very important or permanent results followed this mediation of the crown and many times during the latter part of the century the king was called upon to interfere in the local situation. Often this interference took the form of a command to the sheriff to support the chancellor and the university in their attempt to put down the various disorders of the time.² Furthermore, the history of the fourteenth century continues to reveal many clashes between the rival jurisdictions of university and borough.

The uncertainty and confusion in regard to this period of Cambridge's history has been still further increased by frequent and destructive conflagrations due to other causes than the contests between the townsmen and the students and the burning of the hostels of the latter. These conflagrations seem to have been quite characteristic of the time, and in regard to them an early historian of Cambridge writes as follows: "Whosoever shall consider in both Universities the ill contrivance of many chimnies, hollowness of hearths, shallowness of tunnels, carelessness of coals and candles, catchingness of papers, narrowness of studies, late reading and long watching of scholars, cannot but conclude, that an especial providence preserveth those places."³

Still another source of disorder and also of annoyance to the university is to be found in the tournaments customarily held just outside the town of Cambridge.⁴ It seems that conditions finally became so bad towards the middle of the century that the royal authority was compelled to interfere in behalf of the university for the abatement of this nuisance. The first attempt in this di-

¹ Dyer, *Privileges*, I. 66, 67; Fuller, *History of the university of Cambridge*, 45, 46.

² Documents relating to the university of Cambridge, I. 3, 4, 5, 7, 11, etc.

³ Fuller, *History of the university of Cambridge*, 84.

⁴ For a vivid description of these meetings and their attendant evils see *ibid.*, 25, 26.

rection was made in 1245, when the king ordered that there should be no tilting within five miles of the town.¹ But in spite of the royal prohibition these disorders continued and further decrees were found necessary. In 1252 and again in 1256 the king found it necessary to forbid all tournaments in or about Cambridge under penalty of the forfeiture of the property of the offender.² In 1270, these royal commands were again renewed, and all tournaments or other warlike games were strictly forbidden in Cambridge or within five miles of that place.³ This attitude of the king became for the future the settled policy of the crown.

As the history of university privileges at Cambridge followed much the same lines as at Oxford, the details of the movement need not be dealt with fully even if the materials for a full discussion were available. One striking feature worthy of note, however, is the slowness of the growth of academical prerogatives and liberties as compared with similar developments in the schools at Oxford. This is well illustrated by the fact that it was not until 1268 that the university of Cambridge received an important grant of privileges from the king, and, further, that its earliest extant statute bears the date 1275, though it is perhaps true that this latter document implies earlier statutes.⁴ The royal grant of 1268 was concerned with privileges that Oxford had enjoyed since 1248 and 1255, namely, those concerning the assize of bread and ale, the conservation of the peace, and other rights.⁵ This grant, therefore, gives the first hint of the future civil and criminal jurisdiction of the chancellor.

Considerably later another charter was issued by the king

¹ Fuller, *History of the university of Cambridge*, 26.

² Willard, 49; *Documents relating to the university of Cambridge*, I. 2.

³ Fuller, *History of the university of Cambridge*, 45; Dyer, *Privileges*, I. 67, 68.

⁴ Rashdall, II. 548.

⁵ Dyer, *Privileges*, I. 63-65; Fuller, *History of the university of Cambridge*, 41, note 4.

which confirmed the liberties of the university, regulated the taxation of houses, commanded the sheriff to give aid to the chancellor whenever needed, and prohibited tournaments near the town of Cambridge.¹ The following year the chancellor and the mayor were given cognizance of cases concerning regrators and forestallers and the victuals sold by them were forfeited to the use of the Hospital of St. John.²

During the thirteenth century, however, the powers of the chancellor developed very slowly—in fact, by the end of that period the development of his judicial functions had barely begun. It was probably not until 1305 that he obtained cognizance over personal actions brought by scholars against laymen and not until 1383 that he gained full jurisdiction over all criminal cases except felony and mayhem.³ Slower still was the growth of his ecclesiastical independence. By the close of the thirteenth century no progress at all had been made in that direction as far as positive right was concerned, though in all probability the university enjoyed a considerable degree of freedom in the actual conduct of its affairs.⁴ The bishop of Ely had the power to decide internal disputes between the chancellor and the masters or between the various faculties and also to hear appeals from the decisions of the chancellor of the university. Indeed, it is said that the earliest evidence for even a limited exemption from the jurisdiction of the bishop is not met with until 1392, episcopal confirmation was not dispensed with until 1401, and it was not until 1432 that the university was declared to be entirely independent of ecclesiastical control.⁵

¹ Documents relating to the university of Cambridge, I. 3.

² Dyer, *Privileges*, I. 9, under date of 1293.

³ Documents relating to the university of Cambridge, I. 4; Dyer, *Privileges*, I. 11. Apparently the date, 1314, given in Rashdall, II. 548, is incorrect.

⁴ See the letter of Hugh, bishop of Ely, in Dyer, *Privileges*, I. 8.

⁵ Rashdall, II. 549, 550; Mullinger, *University of Cambridge*, 288-290.

Though little or no real progress was made towards such independence during the thirteenth century, there was an interesting dispute in that period which not only makes clear the authority enjoyed by the bishop of Ely but also reveals a settlement of the trouble over the conflicting jurisdictions of the archdeacon and the chancellor long before such an agreement was reached at Oxford. It also reveals a situation at Cambridge which seems to be peculiar to that university, namely, the presence there of a master glomeriae or superintendent of the grammar schools whose jurisdiction was distinct from and in a considerable degree independent of that of the chancellor. But this master of glomery was dependent upon the archdeacon for his position and authority, and consequently a dispute over cases involving both glomerels and scholars led to a controversy between the archdeacon and the chancellor of the university regarding their respective jurisdictions.

It was in 1276 that this trouble arose, and apparently all the questions at issue were promptly referred to Hugh Balsham, bishop of Ely, for his decision. He commanded that the master of glomery should have exclusive control of all cases between glomerels themselves or between glomerels and townsmen and that disputes between the glomerels and the scholars should go on appeal to the chancellor. Of course the ordinary jurisdiction of the chancellor already gave him control whenever the defendant was a scholar. However, there was one important exception to this otherwise strictly impartial division of powers between the two officials; in all cases relating to the rent of houses rated by the masters and burgesses and in those concerning grave crimes the decision was to be reserved to the chancellor.

But the bishop goes further than this, and his letter becomes in reality a general statement of the respective rights and duties of the chancellor and the archdeacon, both of whom were representatives of the episcopal authority at Cambridge. The letter

decrees that all scholars' servants, writers, illuminators, stationers, and others, shall possess the immunities and privileges belonging to the scholars themselves, including exemption from the archdeacon's authority but that their families shall appear before the archdeacon in all cases coming under his jurisdiction. Also, all the clergy were to be subject to the archdeacon, with the exception of those who came to Cambridge for the purpose of study. And, finally, it was specifically provided that all appeals in ecclesiastical cases should be reserved to the episcopal see itself. It should be noted, however, that this last provision really seems to imply a recognition of the actual jurisdiction of the chancellor in all the ordinary affairs of the university.¹

During the period under consideration, the activity of the mendicant orders became of great importance in the history of Cambridge as well as in that of Oxford. At Cambridge as at Oxford and elsewhere in England the Franciscans were the most numerous and influential of the various orders of friars. They probably came to Cambridge as early as 1224 and established themselves in the "Old Synagogue" which was given to them by the townsmen.² How is this early appearance of the Franciscans to be explained unless it be by the supposition that Cambridge was the seat of a fairly flourishing *studium generale* that was able to attract their attention? The coming of the friars was always an event of great importance in the history of a university, for they not only represented reform in religious life and work but also activity and progress in the intellectual life of the age, and it was in their ranks that the great schoolmen of the time were to be found. However, it must be admitted that during the thirteenth century at least the university of Cambridge could not

¹ Fuller, *History of the university of Cambridge*, 47-51; Willard, 8, 26, 29, 30.

² *Monumenta franciscana*, (R. S.), I, 10, 17; Dugdale, VI, 1509.

boast of any famous men,¹ while at Oxford there were several who held a place in the foremost rank of scholars and philosophers. And yet we are justified in believing that the mendicant orders did much in fostering the studium at Cambridge and in quickening its intellectual life and that to them a considerable part of the credit is due for the progress that was made previous to the fourteenth century.

The appearance of the other orders of friars at Cambridge was a good deal later than that of the Franciscans. The Carmelites had settled outside the town in 1249, but it was not until 1291 that they moved into the parish of St. John and established themselves as a factor in the life of that place.² Before that time, however, the Dominicans, the most important rivals of the Franciscans, had been able to found a priory at Cambridge as a result of the charity of several devout people.³ It has been mentioned already that in 1303 this order became engaged in a controversy with the university authorities over the question of graduation in arts, being probably influenced in large part by the success of their brethren in the long contest with the university of Paris.⁴ The fourth great order, that of the Austin friars was not represented at Cambridge until about 1290.⁵ Thus it is seen that most of the mendicant orders did not reach Cambridge until after the early period of enthusiasm and of popularity had passed and the age of corruption and decline had begun.

¹ Rashdall, II. 552, says there was not a great man or even one prominent ecclesiastic who studied at Cambridge before the middle of the fourteenth century. This statement seems extreme but investigation reveals its substantial truth.

² Dugdale, VI. 1570.

³ Ibid., VI. 1485.

⁴ Fuller, *History of the university of Cambridge*, 78, 79, gives the terms of the settlement reached by the university and the friars. See also Rashdall, II. 559, note 2, on this contest.

⁵ Dugdale, VI. 1591.

One further topic yet remains for consideration, namely, the beginnings of that magnificent system of college foundations which by the fifteenth century had become of supreme importance in the history of the university. At Cambridge, as at Oxford, there was during the thirteenth century a system of halls under the supervision of principals who were elected by the students,¹ but these halls proved inadequate to the needs of the time and as a consequence the colleges were gradually developed to meet those needs. In 1256 William of Kilkenny, bishop of Ely, left a bequest similar to that which Alan Basset had left to Oxford a short time before. The bishop's plan contemplated the support of two priests in the Cambridge schools who were to study divinity and also to say masses for the soul of their benefactor.² But it was the friars that gave the first examples of a real collegiate system by their well-regulated life in houses of their own.³

The earliest college, however, was founded in a spirit of opposition not only to the monastic theory of education but also to the ascetic discipline of the mendicants. Hugh Balsham, a Benedictine, was elected bishop of Ely in 1256 as the successor of William of Kilkenny. He was a man of public spirit and national sympathies and an advocate of reforms tending towards a more popular education.⁴ In order to carry out his views regarding the education of priests rather than of monks or friars he provided for the support of a number of secular scholars in the Hospital of St. John. But the regulars and the seculars were too dissimilar to unite in this way and the feuds that resulted compelled the bishop to seek other quarters for his scholars. By way of compromise the brethren of the Hospital gave up to them the impropriation

¹ Mullinger, *University of Cambridge*, 217-221, 639, 640.

² Rashdall, II. 558, 559.

³ Mullinger, *University of Cambridge*, 221, 222, criticises the friars for this method of proselyting and of attracting students.

⁴ *Ibid.*, 224, 225.

of St. Peter's Church and the two adjoining hostels, and it was upon this foundation that the career of Peterhouse began in 1284.¹ At first this college was poorly endowed, but there was some augmentation of its resources in 1307 when it obtained the adjoining property that had been held by the Friars of the Sack.²

The "studious scholars" of Peterhouse were to live under the "Rule of Merton," but the code in imitation of that system was not given definite form until 1338. As at Merton, the scholars were to study the "arts, Aristotle, canon law, or theology" but a liberal education was made a prerequisite for the study of theology. Of the fourteen scholars supported by the foundation, two were permitted to study civil and canon law and one to study medicine.³ The example of Hugh Balsham was followed in the next century, and by 1352 the foundation of seven additional colleges is sufficient proof of the rapid development of the collegiate system at Cambridge.⁴ Indeed, it has been said that for some time the university was probably kept alive in large part by the munificence of the founders of the colleges.⁵

It is very evident from this sketch that the university of Cambridge in the thirteenth century did not attain anything like the importance and influence which belonged to the more prosperous university at Oxford. In fact the question has been raised as to whether the schools of Cambridge really became a *studium generale* before the issuance of the papal bull of 1318 which first definitely recognized the existence of a university at that place.⁶

¹ Documents relating to the university of Cambridge, I. 3; Mullinger, *University of Cambridge*, 227, 228.

² Dugdale, VI. 1608; Mullinger, *University of Cambridge*, 228, 229.

³ Mullinger, *History of the university of Cambridge*, 33, 34.

⁴ In the fourteenth century King's Hall, Michaelhouse, University Hall, Pembroke, Gonville, Trinity Hall, and Corpus Christi, were founded. Rashdall, II. 561-570.

⁵ *Ibid.*, II. 557.

⁶ This document is given in Fuller, *History of the university of Cambridge*, 80, 81; for discussion, Rashdall, II. 550-552.

However, it seems clear that all of the essential characteristics of a university were to be found there during the thirteenth century, that is, a number of masters banded together into a gild or corporation, a system of licenses and inceptions, students from far and wide, and, finally, royal recognition and charters of privileges and, in addition, this corporate body had developed a fairly definite governmental organization with the chancellor at its head. The fact that the term *studium generale* is not met with in connection with Cambridge previous to 1318 is not sufficient to disprove the existence of a university long before that time.

This discussion, however, does emphasize one very important fact and that is the comparative insignificance of the university of Cambridge during the early period of its history. As it is customary to-day to place the two great English universities side by side in reputation and importance this fact comes as a surprise and possibly the first impulse is to refuse to give it full acceptance, but a brief investigation will suffice to emphasize the meagerness of the history of the university of Cambridge before the period of the ascendancy of the colleges. It was not until the renaissance that this university advanced to a position of equality with the sister university at Oxford.¹

Another striking feature in the history of the university of Cambridge in the thirteenth century is the close similarity to Oxford, illustrated both by the details of its growth and by its constitutional organization. Its organization as revealed in its development at the beginning of the fifteenth century seems to have been framed in large part upon the Oxford model, though a few original features may be noticed at that time.² This influence has perhaps been sufficiently emphasized in the present

¹ Mullinger, *History of the university of Cambridge*, 66, 67; Rashdall, II, 553.

² *Ibid.*, II, 554-557, gives a full list of these variations from the Oxford constitution.

chapter, at least as far as the thirteenth century is concerned, and so need not be dwelt upon now. In its development the university of Cambridge was much slower than the more favored Oxford studium, and constitutional and other questions were not generally carried to the extreme length that they were at Oxford. But it should be noted, in conclusion, that directly or indirectly Cambridge and Oxford were both modeled in great measure upon Paris.¹

¹ Rashdall, II. 553, 554, emphasizes the dependence of Cambridge upon Oxford. See also Mullinger, *University of Cambridge*, 132-134. Mullinger, however, points out a considerable and direct Parisian influence at Cambridge.

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INDEX

- Abelard, Peter, represents first period of scholasticism, 7.
intellectual position of, 10.
life of, 11.
characteristics of teaching of, 11, 12.
influence of, on rise of universities, 12, 18.
- Abingdon, monastery of, a seat of learning, 27.
- Age of Grosseteste, 97.
- Agnellus of Pisa, establishes school at Oxford, 97.
- Albertus Magnus, representative of fully developed scholasticism, 7.
- Alcuin, called to Charlemagne's court, 2.
work of, in behalf of education, 2, 3.
- Alfred the Great, revival of intellectual activity under, 3, 4.
literary activity of, 4.
reputed founder of Oxford university, 23.
- Anselm, opposition of, to nominalism, 10.
- Aquinas, Thomas, represents culmination of scholasticism, 7.
works of, attacked at Oxford, 48.
- Arabs, brilliant civilization of, 6.
welcome christian students, 6.
medicine developed by, 16.
- Archdeacon, authority of, concurrent with that of chancellor, 49, 89.
agreement regarding rights of chancellor and, 94.
controversy of, with chancellor of Cambridge, 117, 118.
- Archetypal universities, 19, 20.
- Architecture, revival of, 4.
tradition of, established by Merton college, 63.
- Archives, destroyed at Cambridge, 104, 112.
- Aristotle, supreme in middle ages, 6.
influence of, on Arabs, 6.
commentaries of schoolmen upon, 8.
studied at Peterhouse, 121.
- Arthur, king, reputed founder of university of Cambridge, 105.
- Arts, faculty of, 19, 53, 99-101.

- Asser, biographer of Alfred, 23.
Augustinians, decline of, 95.
Austin friars, establish convent in Holywell, 98.
 settle at Cambridge, 119.
Aymar de Lusignan, quarrel of, with burghers of Oxford, 73.
Bacon, Roger, continues current of independent thought, 13.
Balliol college, foundation of, 60, 61.
 organization and government of, 61.
 an adaptation of houses of friars, 102.
Balsham, Hugh, settles dispute between chancellor and archdeacon, 117,
 118.
 founds Peterhouse, 121.
Barnwell, priory of, 106, 108.
Basset, Alan, chantry founded by, 59.
Barons' war (The), turbulence during, 75-77, 112.
Beaumont, fields of, 75.
Benedictines, establish halls at Oxford, 58.
 decline of, 95.
Benefit of clergy, right of, gained by scholars at Oxford, 52, 69.
Berengar of Tours, attacks doctrine of transubstantiation, 9.
Bernard of Clairvaux, founds monastery, 13.
 opposes rationalism of Abelard, 13.
Bologna, revival of law at, 5.
Bologna, university of, one of earliest universities, 13, 16.
 character of, determined by local conditions, 16, 17.
 gradual development of, 17.
 organization of, 17, 18.
 rise of colleges at, 18.
 influence of, upon university movement, 19, 20.
Boniface, archbishop of Canterbury, visit of, to Oxford, 43.
Bread and ale, assay of, right of university officials to attend, 53, 74, 75.
 meaning of, 74, note 1.
Brutus, coming of, to England, 23.
Bull, papal, granting exemptions to Oxford, 90.
 of 1318, formal recognition of Cambridge by, 121.
Cambridge, borough of, early history of, 106.
 influence of monastery of Ely upon, 107.
 privileges of, 107.
 contests of, with university, 111, 113, 114.

Cambridge, university of, influenced by continental universities, 22.

secession of Oxford students to, 41, 68, 71, 109, 111.

success of dominicans at, 100.

scantiness of records concerning, 104.

mythical history of, 104, 105.

influenced by conditions in the borough of Cambridge, 106, 107.

theories of origin, 108, 109.

precarious existence of, 109.

parisian scholars repair to, 109, 110.

royal writs concerning keeping of peace at, 110, 111.

royal and papal recognition of, 111.

struggles of, with burgesses of Cambridge, 111, 113, 114.

the "nations" at, 112.

secession from, to Northampton, 113.

mediation of king between borough and, 113, 114.

destructive fires at, 114.

attempt to prohibit tournaments near, 114, 115.

slow growth of privileges of, 115, 116.

development of chancellorship at, 116.

controversy between chancellor of, and archdeacon, 117, 118.

influence of mendicant orders upon, 118, 119.

development of collegiate system at, 120, 121.

character and position of, at close of thirteenth century, 121-123.

influence of Oxford and Paris upon, 122, 123.

Cancellarius, 50.

Cantabar, legendary founder of Cambridge university, 105.

Canterbury, archbishop of, visits Oxford, 43, 48.

upholds university against bishop of Lincoln, 92, 93.

Canterbury, a center of education, 27.

Capitularies, of Charlemagne, on education, 2, 3.

Carmelites, establishment of, at Oxford, 98.

at Cambridge, 119.

Chancellor, authority of, derived from bishop of Lincoln, 32, 49.

beginning of encroachments of, at expense of borough, 42, 50, 72.

first allusions to, 48, 49, 88, 89.

elected by masters, 49.

title of, definitely recognized, 50.

threefold origin of powers of, 51.

ecclesiastical jurisdiction of, 51, 52, 80, 83, 86.

civil and criminal jurisdiction of, 51, 52, 72-75, 78-82, 86.

reasons for extension of powers of, 52, 91, 92.

jurisdiction of, vexations, 80.

- identified with university, 89, 91.
- struggle over confirmation of, 93, 94.
- right of university to depose, 94.
- dispensing power of, 100.
- office of, instituted at Cambridge, 110.
- development of powers of, begun, 115, 116.
- controversy of, with archdeacon, 117, 118.
- Chantries, founding of, 59, 120.
- Charlemagne, plans of, for educational reform, 2.
- capitularies in regard to education, 2, 3.
- influence of, on medieval education, 3, 4.
- Charles the Bald, intellectual activity at court of, 3.
- Charter, defining relations between university and borough of Oxford,
 - granted in 1244, 72, 73.
 - in 1248, 73, 74.
 - in 1251, 74.
 - in 1255, 75.
 - in 1265, 77.
 - in 1268, 77.
 - in 1275, 78, 79.
 - in 1290, 80-83.
 - of Cambridge, granted in 1240, 111.
 - in 1268, 115, 116.
- Chartres, school at, 3.
- Chronicle, Ingulphine, explanation of, regarding origin of Cambridge, 105.
- Chroniclers, exaggerations of, 17, 44, 45.
 - silence of regarding migration to Oxford, 37.
- Church, agent in assimilation of roman civilization, 1.
 - kept secular education alive, 1, 2, 4, 5.
 - foster-mother of university, 27, 88.
 - relations of, with university, 44, 47, 69, 87-94.
 - see, also, under Lincoln, bishop of.
- Cistercians, found Rewley abbey, 58.
- Citramontani, confederation of, 18.
- Civilization, assimilation of roman, by barbarians, 1.
 - arabian, 6.
 - influence of, arabian, on rise of universities, 14.
- Clairvaux, monastery of, founded by Bernard, 13.
- Classics, decline of, 1.
 - opposition of Clugny to, 4.
 - a basis of secular culture, 5, 6.
 - influence of, on arabs, 6.

- Clerks, possess right to benefit of clergy, 52, 69.
 privileges gained by, see under Charter.
 contests of, with burghers, see under Town and Gown.
 meaning of the term, 44, 81, 118.
- Clugny, attitude of, towards classics, 4.
 influence of, upon Bernard, 13.
- Colleges, at Bologna, 18.
 influence of parisian, on english, 55, 56, 61.
 influences preceding actual foundation of, 56-59.
 foundation of, at Oxford, 59-64.
 significance of, in university history, 64, 65.
 influence of friars upon, 102, 120.
 foundation of, at Cambridge, 120, 121.
- Communes, demand secular education, 14, 15.
- Congregation, 19, 53, 92.
- Conservators, papal, appointed at Oxford, 90.
- Consiliariae, at Bologna, 18.
- Corbeil, Abelard lectures at, 11.
- Cordova, university of, 6.
- Crusades, influence of, on twelfth century renaissance, 7.
 on rise of universities, 14.
- Curriculum, medieval, narrow, 1.
 content of, 5.
- Dalderby, Bishop, opposes encroachments of university, 93.
- Dark ages, education during, 1, 5.
- Debts, limited jurisdiction of chancellor over, 73, 81.
- Degrees, academic, controversy over, 98-101.
- Dervorguilla, establishes Balliol college on firmer basis, 61.
- Didanus, prince, legendary founder of St. Frideswide, 24.
- Discipline, state of, at Oxford, 45-48, 70.
 aided by control of halls, 57, 58.
 royal writs to preserve, 70, 110, 111.
 state of, at Cambridge, 110, 111, 113, 115.
- Dominic, leader of reform movement, 95.
- Dominicans, settle at Oxford, 58, 96, 97.
 characteristics of, 96.
 influence of, 97, 98, 101, 102.
 removal of, to parish of St. Ebbe, 98.
 attack of, upon statute of 1252, 100, 101.
 at Cambridge, 100, 119.

- Duns Scotus, represents culmination of scholasticism, 7.
- Durham hall, founding of, 58.
- Education, revival of, by Charlemagne, 2, 3.
 traditional, 5.
 influence of crusades on, 7.
 popularized by Abelard, 12.
 secular, demand for, 5, 14, 15, 99, 100.
 different systems of, at Oxford, 48.
 liberal, emphasized at Oxford, 99.
 influence of friars upon, 102.
- Edward the Elder, takes possession of Oxford, 24.
 reputed restorer of university of Cambridge, 105.
- Edward I, orders return of scholars to Oxford, 47.
 privileges granted university by, 78, 79.
 award of, provisions of, 80-82.
- Edward, prince, at Oxford, 75.
- Ely, bishop of, authority of, over university of Cambridge, 110, 116, 117.
 confirms statute regarding supervision of scholars, 111.
- Ely, monastery of, made seat of bishopric, 107.
 an educational center, 108.
- England, development of nationality in, 40.
- Errors, at Oxford, condemned, 48.
- Euclid, influence of, on Arabs, 6.
- Excommunication, power of, exercised by chancellor, 79.
 gained by chancellor, 91.
- Eynesham, abbey of, influence of, on rise of Oxford university, 27.
 assumes obligations of townsmen, 56.
- Fires, at Cambridge, 114.
- Forfeitures, joint cognizance of, 81.
 go to hospital of St. John, 81, 116.
- France, expulsion of alien scholars from, 33.
 and England, hostility of, 39.
- Francis of Assisi, leads reform movement, 95.
- Franciscans, halls of, at Oxford, 58.
 character and ideals of, 95, 96.
 settlement of, at Oxford, 96, 97.
 establish school, 97, 102.
 growth of, 98.
 oppose requirements for degree in theology, 99.
 influence of, on university, 101, 102.
 at Cambridge, 109, 118, 119.

- Frederick Barbarossa, grants privileges to Bologna, 17.
- Friars, and regular orders, hostility of, 48, 103.
rivalry between franciscan and dominican, 48, 96, 103.
controversy of, with universities, 54, 87, 98-101, 119.
lead reform movement, 94, 95.
character and ideals of, 95, 96.
causes of growth of, 97, 98.
attractive halls of, 58, 97, 98, 102.
influence of, upon universities, 101, 102, 118-120.
criticism of, 102, 103.
settlement of, at Cambridge, 118, 119.
- Friars of the sack, property of, given to Peterhouse, 121.
- Gerald of Wales, lectures at Oxford, 29, 35, 49.
describes his visit, 30.
conditions revealed by, at Oxford, 30, 31.
- Gilbert, scotch scholar at Oxford, 73.
- Gilds, see Guilds.
- Gloucester hall, founding of, 58.
- Gottschalk, discusses predestination, 3.
- Grammar schools, in university towns, 44, 117.
- Gravesend, Richard of, maintains peace with university of Oxford, 92.
- Greek learning, influence of, on arabs, 6.
- Gregory IX, recognizes right of faculties to modify constitution, 19.
admits right to suspend lectures, 71.
- Grosseteste, ordinance of, regarding loan chests, 42, 56, 57.
rector of Oxford schools, 50, 89.
requests transfer of clerks to chancellor's jurisdiction, 72, 89.
excommunicates murderers of a scholar, 73.
befriends university, 89.
Franciscan lecturer at Oxford, 97.
friendship of, towards friars, 97.
- Guilds, characteristic of middle ages, 15.
influence of, on university movement, 15.
formation of, at Bologna, 17.
at Paris, 18.
at Oxford, 30, 34.
at Cambridge, 110, 111.
- Halls, established at Oxford, 57, 58, 97.
government of, 57, 58.
taxation of, 75, 79, 81, 82, 111, 117.
at Cambridge, 120.

- Heloise. *Raison* of, with Abelard, 11.
- Henry I, charter of, to borough of Oxford, 66.
- Henry II, quarrel of, with Becket, 33.
 recalls clerks to England, 34, 37.
 forbids clerks to leave England, 34, 39.
 growth of Oxford university in reign of, 37, 39, 40.
 grants charter to borough of Oxford, 66.
- Henry III, appeals to Oxford against bishop of Norwich, 43.
 attempt of, to preserve discipline at Oxford, 46, 70.
 confirms privileges of borough of Oxford, 67.
 orders clerks given up to chancellor, 72.
 struggle of, with barons, 75-77.
 university at Oxford dispersed by, 76.
 limits authority of chancellor, 89.
 letter of, regarding expulsion of clerks from Cambridge, 109.
 invites parisian scholars to England, 109.
 grants charter of privileges to Cambridge, 111.
- Henry of Lexington, chosen to see of Lincoln, 90.
 contest of, with university, 90, 91.
- Homicide and mayhem, jurisdiction over, forbidden chancellor, 80, 82, 116.
- Inceptors, required to take oath, 100, 113.
- Innocent III, recognizes university of Paris, 19.
 quarrel of, with John, 88.
- Innocent IV, Oxford under special protection of, 90.
 grants exemptions to university, 90.
- Inquest juries, 73.
- Interdict, borough of Oxford under, 68, 69.
 university under, 71.
- Invasions, barbarian, 1.
 norman, saracen, danish, 3, 4, 105.
- Irnerius, lectures of, on roman law, 17, 28.
- Jewish quarter, dominicans settle in, 96.
- Jews, attacked by clerks, 72.
 interest taken by, limited, 72, 74.
 chancellor's jurisdiction extended to, 75, note 2.
- John de Balliol, founder of Balliol college, 60.
- John, king, struggle of, with church, 38, 68, 88.
 grants charter to borough of Oxford, 66.
 privileges granted by, to Cambridge, 107.
- John of Salisbury, illustrates decline of independent thought, 13.
 mentions debate regarding universals, 29.
 letter of, to Peter the writer, 33.

- Jurisdiction, of bishop of Lincoln, over Oxford, 39, 49, 50, 69, 70, 74.
of chancellor, 51, 52, 73-75, 78-83, 86.
of university, personal, 83.
of borough, territorial, 83.
of university, perpetuated, 83.
- Jurisdictions, two separate, at Oxford, 82, 83.
- Kilwardby, archbishop, condemns errors at Oxford, 48.
- Law, influences secular culture, 5.
advance in study of, 7.
specialization in, 14.
revival of, in Italy, 17, 28.
development of canon, 17.
roman and canon, introduced into England, 28, 29.
study of, prohibited by Stephen, 28.
- Learning, decline in, 1.
carolingian revival of, 2-4.
arabian, disseminated, 6.
influence of crusades upon, 7.
specialization in, 14, 16-19.
see, also, under Education and Classics.
- Legate, papal, receives submission of John, 68.
at Oxford, 70, 71.
- Legatine ordinance, freedom of masters revealed by, 38.
upholds authority of bishop of Lincoln, 39.
importance of, 41.
shows establishment of chancellorship, 48, 49.
leads to institution of loan chests, 56.
provisions of, 68, 69.
- Liber pauperum, studied at Oxford, 29.
- Libraries, arabian, 6.
- Lincoln, bishop of, represented at Oxford by chancellor, 32, 49, 89.
authority of, recognized, 39, 49, 50, 69, 70, 74.
election of Grosseteste as, 89.
Henry of Lexington as, 90.
struggle of, to maintain prerogatives, 90-93.
causes making chancellor independent of, 91, 92.
Richard of Gravesend as, 92.
Oliver Sutton as, 92.
archbishop upholds university against, 93.
Dalderby as, 93.
struggle of, with university, over confirmation of chancellor, 93, 94.
university independent of, 94.

- Loan chests, established, 42, 46.
 development of system of, 57.
- Local government, relation of royal authority to, 85, 86.
- Logic, study of, at Paris, 5, 18.
 influence of, upon scholasticism, 8.
- London, bishop of, appointed conservator, 90.
- Magna Charta, of university of Oxford, 72.
- Marsh, Adam, pleads for friars, 99.
- Master of glomery, at Cambridge, 117.
- Masters, Oxford, independence of, explained, 32, 33, 37-39, 67, 88, 89.
 receive aid from king, 42.
 elect chancellor, 49.
 suspension of, for violation of statutes, 53.
 control university, 54.
 supervision of, over scholars, 70.
 victory of, over friars, 87, 98-101.
 complaint of, against bishop of Lincoln, 90.
 Cambridge, supervision of, over scholars, 110, 111.
- Mayhem, chancellor forbidden jurisdiction over, 80, 82, 116.
- Medicine, advancement in, 7.
 specialization in, 14.
 study of, at Salerno, 16.
 growth of arabic system of, 16.
- Melun, Abelard lectures at, 11.
- Merton college, influence of, on University college, 60.
 basis of collegiate system, 61.
 organization and government of, 62, 63.
 buildings of, 63.
 designed to train secular clergy, 63, 64.
- Merton hall, 63.
- Migration, right of, 16, 20.
 ease of, 20, 71.
 origin of Oxford attributed to, 26, 33, 31-36.
 from Oxford to Cambridge, 41, 68, 71, 109, 111.
 from Oxford, 47.
 from Oxford to Stamford, 48, 78, note 1.
 from Oxford to Paris, 68.
 from Oxford to Reading, 68.
 from Paris to Oxford, 46, 70, 97.
 from Oxford to Northampton, 76, 78, note 1.
 Cambridge to Northampton, 76, 113.
- Monastic orders, founded in eleventh century, 4.
 spurred to activity by friars, 58, 102.
 decline of, in thirteenth century, 95.

- Monks, Croyland, 105.
- Mysticism, nature of, 12.
 - opposition of, to scholasticism, 13.
- Nations, development of, 15.
 - at Bologna, 17.
 - at Paris, 19, 33.
 - contests between, at Oxford, 46-48.
 - represented by proctors, 53.
 - organization of, at Oxford, 54.
 - at Cambridge, 112.
- Nominalism, position represented by, 9.
 - development of, 9-12.
 - crushed at Sens, 13.
 - revival of, in fourteenth century, 13.
- Non-regents, definite position of, at Oxford, 54.
 - with two faculties, can pass statutes, 54, 101.
- Norman conquest, Oxford at time of, 24, 27.
 - Cambridge at time of, 106.
- Northampton, capture of, by Henry III, 77.
 - university of, founded, 76.
 - secession from Oxford to, 76, 78, note 1.
 - dispersed by royal writ, 77, 113.
 - secession from Cambridge to, 113.
- Numbers, at Bologna, 17.
 - at Oxford, 44, 45.
- Oath, to keep the peace, 47, 100.
 - proctors demand, from inceptors, 53.
 - inceptors required to take, 53, 100, 113.
 - to observe legatine ordinance, 69.
 - of mayor and bailiffs, to observe customs of university, 73.
- Odo, imprisoned, 71.
- Old synagogue, Franciscan quarters at, 118.
- Oxford, borough of, early history of, 24, 66.
 - commercial importance of, 25.
 - an educational center before university era, 25, 26-29.
 - development of chancellorship at expense of, see under Chancellor.
 - difficulty of keeping peace at, 46-48, 70, also under Oath, and Town and Gown.
 - privileges of, 66, 67.
 - under interdict, 68, 69.
 - jurisdiction of, territorial, 83.
 - relation of central authority to, 85.

Oxford, parliament of, 77.

- Oxford, university of, rise of, in first period of scholasticism, 13.
influence of, on university movement, 20.
constitutional dependence of, on Paris, 20, 37, 123.
mythical history of, 23.
borough of Oxford before rise of, 24, 25.
theories regarding origin of, 26.
origin of, explained by gradual development, 26-31.
origin of, attributed to migration, 31-36.
Gerald of Wales visits, 29-31, 35, 49.
Yorkshire scholar at, 35, 36.
conclusions regarding origin of, 36-40.
new era in history of, 41.
dispersion of, in 1209, 41, 68.
a well defined corporation, 42, 50.
in possession of a permanent endowment, 42.
period of rapid development of chancellorship of, 42, 72, 86.
first statutes of, 42.
position of, about 1250, 43.
appeals to, 43.
numbers at, 44, 45.
contests of, with borough, 45, 67, see also Town and Gown.
dissensions within, 45-48.
migration to, from Paris, 46, 70, 97.
cosmopolitan character of, 46.
struggle between nations at, 46-48.
visit to, of archbishop Kilwardby, 48.
development of chancellorship at, 48-52, 86, see also Chancellor.
proctors at, 53.
organization of nations at, 54.
control of, by masters, 54.
place of non-regents in organization of, 54, 101.
controversy of, with friars, 54, 87, 98-101.
development of collegiate system at, 54-65.
location of, becomes permanent, 65.
privileges granted to, see under Charter.
contests of, with burghers, 67-84.
under interdict, 68.
secession from, to Cambridge, 41, 68, 71, 109, 111.
discipline, at, 70.
during Baron's war, 75-77.
secession from, to Northampton, 76.
jurisdiction of, personal, 82, 83.
relation of royal authority to, 85, 86.

- relations of, with friars, 87, 94, 95, 96-101.
- ecclesiastical origin of, 88, 89.
- under authority of bishop of Lincoln, 89.
- friendship of Grosseteste for, 89.
- struggle of, against episcopal control, 90-94.
- influence of friars upon, 101-103.
- Organization, characteristic of middle ages, 15.
- influence of, on rise of universities, 15.
- Orleans, school at, 3.
- Oseney abbey, founding of, 24.
- a center of education, 27.
- Palace school, Alcuin made master of, by Charlemagne, 2.
- influence of, 3.
- founded by Alfred, 3, 4.
- Paris, growth of schools of, 3, 12, 18.
- revival of logic at, 5, 18.
- Paris, Matthew, exalts Oxford, 43, 44, 90.
- criticises friars, 103.
- Paris, university of, influence of Abelard upon, 12, 18.
- arose out of first period of scholasticism, 13, 14.
- one of earliest universities, 16.
- influence of William of Champeaux upon, 18.
- development of, 18, 19.
- influence of Bologna upon, 19.
- nations at, 19, 33.
- influence of, upon university movement, 19.
- englishmen go to, 31.
- migration to, from Oxford, 68.
- migration from, to Oxford, 33, 46, 70, 97.
- victory of friars at, 100.
- influence of, on english universities, 54, 55, 123.
- Peace, preservation of, oath concerning, 47, 53, 100.
- commission for, 113, 114.
- see also Discipline.
- Peckham, archbishop, attack of, on Thomas Aquinas, 48.
- Peterborough, school, at, 27.
- Peterhouse, founding of, 121.
- Philip Augustus, hostility of France under, towards England, 39.
- Picot, founder of St. Giles, 106.
- Plato, influence of, 6.
- Pope, conservators at Oxford appointed by, 90.
- episcopal confirmation of chancellor abolished by, 94.

- upholds university against friars, 101.
- Cambridge recognized by, 111, 121.
- see also Gregory IX and Innocent III.
- Predestination, controversy over, 3.
- Primary universities, 20.
- Prior Robert of St. Frideswide, cure of, 36.
- Proctors, first mention of, 53.
 - powers and duties of, 53.
 - right of, to attend assay of bread and ale, 53, 74.
- Pullen, Robert, lectures at Oxford, 25, 28, 34, 66.
- Quadrivium, content of, 5.
 - requisite to higher degrees, 99.
- Raleigh, bishop of Norwich, denounced at Oxford, 43.
- Rashdall, theory of concerning origin of Oxford, 31-36.
 - essential truth in theory of, retained, 40.
- Reading, migration to, from Oxford, 68.
- Realism, meaning of, 9.
 - the orthodox creed, 10.
 - triumph of, at Sens, 13.
- Reason, emphasized by scholasticism, 8.
 - upheld by Abelard, 11.
- Rector of the schools, position of, at Paris, 19.
 - at Oxford, 49, 50.
 - bishop Grosseteste as, 50, 89.
- Regular clergy, 48, 58, 102, 103.
- Renaissance, carolingian, causes of, 2.
 - Alcuin leader of, 2.
 - results of, 3, 4.
 - twelfth century, causes of, 4-7.
 - influence of, on rise of Oxford, 40.
- Rewley abbey, founding of, 58.
- Rheims, school at, 3.
- Richard I, university of Oxford in existence by time of, 31, 36.
- Robert d'Oili, activity of, at Oxford, 24.
- Robert de Wells, quarrel of, with university, 79.
- Roscellin, represents first period of scholasticism, 7.
 - real founder of nominalism, 9, 10.
 - view of, regarding Trinity, 10.

- Royal authority, recognition of universities by, 42, 111.
 favorable attitude of, towards universities, 51, 52, 78, 85, 86, 113.
 instances of interference of, in local affairs, 46, 47, 68, 70, 72, 74, 76-82,
 84, 89, 91, 93, 109, 110, 113-115.
- Royal award of 1290, provisions of, 80-82.
 real character of, 82, 86.
- Rule of Merton, elaboration of, 62, 63.
 influence of, 60, 64, 121.
 influenced by houses of friars, 102.
- St. Benet, church of, at Cambridge, 106.
- St. Frideswide, legend concerning foundation of, 24.
 suffered in danish wars, 24.
 influence of, on Oxford, 27.
 Prior Robert of, at Oxford, 36.
 loan chest kept at, 56.
- St. George-within-the-castle, church of, built by Robert d'Oili, 24.
- St. Giles, church of, founded at Cambridge, 106, 108.
- St. John, hospital of, at Oxford, forfeitures given to, 81.
 hospital of, founded at Cambridge, 107.
 victuals forfeited to, 116.
- St. Martin of Tours, school of, 3.
- St. Martin's, church of, 84.
- St. Mary's, church of, 32, 76, 83, 84.
- St. Nicholas' day, feast on, to poor scholars, 49, 69.
- St. Peter's church, impropriation of, 120, 121.
- St. Rhadagund, nunnery of, founded at Cambridge, 106.
- Saints' days, celebrations on, forbidden, 46.
- Salerno, revival of medicine at, 5.
 development of medical school at, 16.
- Salerno, university of, one of earliest universities, 16.
 decline of, 16.
- Salisbury, bishop of, appointed conservator, 90.
- Salisbury, university at, 78, note 1.
- Saxony, an intellectual center, 4.
- Scholar, yorkshire, at Oxford, 35, 36.
 meaning of term, 44, 81, 118.
- Scholars, arabs welcome christian, 6.
 flock to educational centers, 14.
 alien, expelled from France, 33.
 poor, loan chests for, 56, 57.

- maintained at Oxford, 59.
- under supervision of masters, 70, 110, 111.
- watched over by royal authority, 85.
- see also Clerks.
- Scholasticism, rise of, 4.
 - influence of crusades on, 7.
 - periods of, 7.
 - universities greatest achievement of, 7.
 - creative period of, 7-12.
 - origin of term, 8.
 - emphasizes reason, 8.
 - a combination of theology and logic, 9.
 - identified with rise of universities, 12.
 - enters service of church, 13.
- Schoolmen, character of activity of, 8.
 - debate question of nature of universals, 9-12.
 - activity of, factor in rise of universities, 14.
- School street, 27, 108.
- Schools, disappearance of roman, 1.
 - character of curriculum of, 1, 5.
 - basis of renaissance movement, 2.
 - carolingian, 2, 3.
 - development of, in Saxony, 4.
 - crowded, in eleventh century, 4.
 - students welcomed to arabian, 6.
 - influence of crusades on, 7.
 - basis of universities, 14.
 - monastic, at Oxford, 27.
 - lay, at Oxford, 27.
 - university of Oxford regarded as independent of, 26, 31, 32.
 - regarded as development from, 26, 27, 38, 39.
 - benedictine, decline of, 95.
 - at Cambridge, 106, 108.
- Scotus Erigena, discusses doctrine of predestination, 3.
- Secession, see under Migration.
- Secular clergy, 48, 63, 64, 102.
- Sens, council of, Abelard condemned at, 11.
 - triumph of realism at, 13.
- Sentences, of Robert Pullen, 28.
- Sigebert, reputed founder of Cambridge university, 105.
- Simon de Montfort, captures king, 77.
 - restores university of Oxford, 77.

- Smith gate, 76.
- Soissons, Abelard condemned at, 11.
- Sorbonne, establishment of, at Paris, 55.
influence of, on Merton college, 55.
- Specialization, influence of, on rise of universities, 14.
- Stamford, secession to, 48, 78, note 1.
- Statute of 1252, concerning graduation in arts, 42, 99, 100.
- Statutes, first issued by university, 42.
run in name of chancellor, 50.
two faculties and non-regents gain power to pass, 54, 101.
adopted concerning halls, 58.
drawn up for University college, 60.
of Merton college, 62.
assent of chancellor to, 91.
against friars, 101.
earliest, at Cambridge, 115.
- Stephen, forbids study of roman law, 28.
- Studium generale, characteristics of, 15, 16, 122.
- Sutton, Oliver, questions university privileges, 92.
insists on confirmation of chancellor, 93.
- Theobaldus Stampensis, school of, at Oxford, 27, 28, 34.
- Theology, advancement in, 7.
influence of, on scholasticism, 8.
specialization in, 14, 17.
Paris orthodox center of, 19.
franciscan school of, at Oxford, 97.
controversy over degree in, 99-101.
- Thomas of York, tests requirements for degree in theology, 99.
- Topographia Hibernica, read at Oxford by Gerald of Wales, 29.
- Tournaments, at Cambridge, 114, 115.
- Tower of London, clerks committed to, 47.
- Town and gown, contests between, in 1209, 41, 44, 45, 68, 69.
in 1228, 69, 70.
in 1232, 70.
in 1235, 70.
in 1236, 70.
in 1238, 70, 71.
in 1244, 72.
in 1248, 73.
in 1251, 74.
in 1264, 75, 76.

- in 1288, 79.
 - in 1298, 45, 83, 84.
 - in 1354, 84.
 - during thirteenth century, 45, 67.
 - increase powers of chancellor, 51.
 - grow more intense, 78.
- Transubstantiation, controversy over, 3.
- doctrine of, attacked by Berengar of Tours, 9.
- Trivium, content of, 5.
- requisite for higher degrees, 99.
- Ultramontani, confederation of, 18.
- Universals, central theme of debate, 9.
- significance of theory of, 9.
 - debate over, at Oxford, 29.
- Universitas, meaning of term, 15.
- Universities, a phase of renaissance, 4.
- influence of crusades on, 7.
 - developed out of early scholasticism, 7, 8.
 - monastic schools basis of, 14.
 - causes of development of, 14, 15.
 - character of medieval, 16.
 - increase in number of, 20.
 - formal recognition of, 20.
 - obscurity surrounding origin of, 22.
 - english, relation of, to continental, 22.
 - development of collegiate system at, 54-64, 120, 121.
- University and borough, contests between, see under Town and Gown.
- University College, foundation of, 59, 60.
- Vacarius, lectures of, at Oxford, 25, 28, 29, 35.
- Victuals, to be sold reasonably, 69.
- compact regarding, broken, 70.
 - chancellor accused of appropriating, 81.
 - forfeitures of, go to Hospital of St. John, 81, 116.
- Wallingford, castle of, clerks imprisoned in, 71.
- Walter of Merton, plan of, foundation of english collegiate system, 61.
- career of, 61, 62, Rule of Merton elaborated by, 62-64.
- Warrenne, Earl, rescues followers of legate, 71.
- Warwick, countess of, loan chest established by, 57.
- William of Champeaux, represents earlier scholasticism, 7.
- opposes nominalism, 10.
 - defeat of, by Abelard, 10.
 - school of, at Paris, 12, 18.

William of Durham, founds University college, 59.

William of Kilkenny, bequest of, 120.

William of Kingscote, elected chancellor, 93.

William of Occam, continues independent thought, 13.

Winchelsey, Robert, resignation of, from chancellorship, 93.

Winchester, bishop of, denounced, 43.

Winchester, palace school at, 3, 4.

an educational center, 27.

Wits, royal, of 1231, 70, 110, 111.

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THE ORIGIN OF THE WEREWOLF SUPERSTITION.¹

The belief that a human being is capable of assuming an animal's form, most frequently that of a wolf, is an almost worldwide superstition. Such a transformed person is the Germanic werewolf, or man-wolf; that is, a wolf which is really a human being.² So the werewolf was a man in wolf's form or wolf's dress,² seen mostly at night,³ and believed generally to be harmful to man.⁴

The origin of this werewolf superstition has not been satisfactorily explained. Adolf Erman⁵ explains the allusion of Herodotus⁶ to the transformation of the Neurians (the people

NOTE.—After the author had written the following article, she gathered most of the material contained in the notes. That the origin and development of the use of masks as given in the Annual Report of the United States Bureau of Ethnology, 1881-82, p. 73 fol. (see note 32) is similar to the origin and development of the werewolf superstition itself, as given in the following pages, was an unexpected coincidence. The author has italicized some words in the quotations.

²According to Mogk, in Paul's *Grundriss der germanischen Philologie* III. 272 *wer* means "man," found in Old Saxon, Anglo-Saxon, Old High German, and werewolf a man in wolf's form. Kögel connects *wer* with Gothic *wasjan* "kleiden." Darum bedeutet *werwolf* eigentlich Wolfsgewand úlfshamr; ähnlich bedeutet vielleicht *berserkr* Bärengewand," therefore werewolf according to Kögel means a wolf's dress. See also Schrader, *Reallexikon der indogermanischen Altertumskunde*.

³Post p. 24.

⁴*Encyclopaedia Britannica*, XV. 90 fol., 1883:—Beastform in mythology proper is far oftener assumed for malignant than for benignant ends. See note 52.

⁵*Reise um die erde durch Nordasien*, Berlin, 1833, I. 232.

⁶Herodotus says of the Neurians, that among Scythians and Greeks settled in Scythia they pass for magicians, because once a year every Neurian becomes a wolf for a few days, and then resumes the human form. See concerning this also Hirt, *Die Indogermanen*, I. 120.

of the present Volhynia, in West Russia) into wolves as due merely to their appearance in winter, dressed in their furs. This explanation, however, would not fit similar superstitions in warm climes. Others ascribe the origin of lycanthropy to primitive Totemism, in which the totem is an animal revered by the members of a tribe and supposed to be hostile to their enemies.⁷ Still another explanation is that of a leader of departed souls as the original werewolf.⁸

The explanation of the origin of the belief in werewolves must be one which will apply the world over, as the werewolf superstition is found pretty much all over the earth,⁹ especially to-day¹⁰ however in Northwest Germany and Slavic lands; namely, in

⁷ Encyclopaedia Britannica, XXIII. 467 fol.

⁸ Note 102, also see note 22.

⁹ See also Mogk in Paul's Grundriss, III. 272. Dr. Rud. Leubuscher, *Über die Wehrwölfe und Thierverwandlungen im Mittelalter*, Berlin, 1850, mentions cases in ancient Arcadia, in Arabia, Abyssinia (hyenas), and the almost epidemic disease in the Middle Ages. Dr. W. Hertz, *Der Werwolf*, Stuttgart, 1862, ascribes the superstition to Armenia, Egypt, Abyssinia (hyenas), Greece (pages 20-28), but not to India, contrary to Encyc. Brit. below; on p. 133 he says: "Tierverwandlungen sind allgemein menschlich, finden wir überall. Die eigentümliche Entwicklung der Werwölfsagen aber finden wir vorzugsweise bei einer bestimmten Völkergruppe, den arischen Stämmen der Griechen, Römer, Kelten, Germanen und Slaven; bei den südwärts gezogenen Stämmen der Inder und Iranier sind uns gleiche Sagen nicht begegnet [but see below]. Am massenhaftesten treten die Werwölfe bei den Slaven auf, und ihnen gehört die älteste historische Erwähnung der Sage; viel älter aber ist der Lykaon Mythos und arkadische Werwölfe". According to Andree, *Ethnographische Parallelen und Vergleiche*, Stuttgart, 1878, ss. 62-80, the superstition is found in every European country (amongst Anglo-Saxons, English, French, Bretons, Poles, Tschechs, Lithuanians, White Russians of Poland, inhabitants of Island Oesel, Russians, Italians, Portuguese, Provencal peoples, Greeks, Kelts, in Asia, Africa, America; but not in India nor Persia, contrary to Encyc. Brit. below), especially though in northwestern Germany and in Slavic lands.

As to the American Indians, see *Ethnological Report for 1880-81*, p. 83, "From their close relations with wild animals Indians' stories of transformations into beasts and beasts into men are numerous and interesting. . . In times of peace, during the long winter evenings, some famous story-

the lands where the wolf is most common.^{11,12} According to

teller told of those days in the past when men and animals could transform themselves at will and hold converse with one another."

Jacob Grimm, *Teutonic Mythology*, Bell & Sons, 1883, II. 668 says no metamorphosis occurs more frequently in Germanic antiquities than that of men into werewolves. Thus Fenrisúlfr, a son of Loki, makes his appearance in wolf's shape among the gods.

Encyc. Brit. XV. 89 fol., under the heading *Lycanthropy*, states:—A belief firmly rooted among all savages is that men are in certain circumstances transformed temporarily or permanently into wolves and other inferior animals. In Europe the transformation into a wolf is by far more prominent and frequent (amongst Greeks, Russians, English, Germans, French, Scandinavians). Belief in metamorphosis into the animal most prominent in any locality itself acquires a special prominence. Thus the *were-wolf* prevails in Europe, also in England, Wales, Ireland; and in S. France, the Netherlands, Germany, Lithuania, Bulgaria, Servia, Bohemia, Poland, Russia, he can hardly be pronounced extinct now (see note 12). In Denmark, Sweden, Norway and Iceland the *bear* competes with the wolf for pre-eminence. In Persia the *bear* is supreme; in Japan the *fox*; in India the *serpent* vies with the *tiger* (contrary to Mogk in Paul's Grd., III. 272, who says:—"Nur Griechen, Römer, Kelten, Germanen, Slaven unter den indogermanischen Völkern kennen den Werwolf; den Indern und Iranern ist er unbekannt.") Compare notes 6 and 9, Hertz, p. 133; in Abyssinia and Borneo the *hyena* with the *lion*; in E. Africa the *lion* with the *alligator*; in W. Africa the *leopard* is perhaps most frequently the form assumed by man; among the Abipones the *tiger*, among the Arawaks the *jaguar*, etc.

In Brockhaus' *Konversations-Lexikon*, for the Middle Ages the werewolf belief is ascribed to all Slavic, Celtic, Germanic and Romanic peoples; found to-day especially in Volhynia and White Russia.

Paul, *Grundriss*, III. 272:—Bei den Angelsachsen lässt sich der Werwolf im 11. Jahrh. nachweisen: Knut befahl den Priestern, ihre Herden vor dem werewolf zu schirmen Das älteste Zeugnis auf deutschem Gebiete vom Werwolf ist vom Burchard v. Worms (11 century).

¹⁰ See note 9.

¹¹ Encyc. Brit. XV. 89 fol.:—There can nowhere be a living belief in contemporary metamorphosis into any animal which has ceased to exist in the particular locality. Belief in metamorphosis into the animal most prominent in any locality itself acquires a special prominence. (See note 12.) In none of these cases however is the power of transformation limited exclusively to the prominent and dominant animal.

¹² Encyc. Brit. XXIV. 628 fol. under *Wolf*:—The wolf is found

Mogk¹³ the superstition prevails to-day especially in the north and east of Germany.¹⁴

The werewolf superstition is an old one, a primitive one.¹⁵

in nearly the whole of Europe and Asia, North America from Greenland to Mexico, the Indian peninsula, but not in Ceylon, Burmah or Siam; and not in South America or Africa, in the two latter jackals instead.

Meyer's *Kleines konversations-lexikon*:—Der wolf "ist häufig in Ost und Nordeuropa, Mittel-und Nordasien, Nordamerika, seltener in Frankreich und Belgien, den Herden gefährlich, besonders in Russland." *Encyc. Brit.*, XXIV under *Wolf*:—In northern countries the wolf is generally larger and more powerful than in the southern portion of its range. Its habits are similar everywhere. It has from time immemorial been known to man in all the countries it inhabits as the devastator of his flocks of sheep. It has speed and remarkable endurance. They usually assemble in troops or packs, except in summer, and by their combined and persevering efforts are able to overpower and kill even such great animals as the American bison. Children and even grown people are not infrequently attacked by them when pressed for hunger. The ferocity of the wolf in the wild state is proverbial. Even when tamed, they can rarely be trusted by strangers.

¹³ Paul, *Grundriss*, III. 272.

¹⁴Gustav Freytag, *Bilder aus neuer zeit*, Leipzig, 1904, p. 275 fol., speaking of the Polish borderlands, says: "Noch lebte das Landvolk in ohnmächtigem Kampf mit den Heerden der Wölfe, wenig Dörfer, welchen nicht in jedem Winter Menschen und Thiere decimirt wurden," and in the same note 2, pp. 275-6:—"Als 1815 die gegenwärtige Provinz Posen an Preussen zurückfiel, waren auch dort die Wölfe eine Landplage. Nach Angaben der Posener Provinzialblätter wurden im Regierungsbezirk Posen vom 1. Sept. 1815 bis Ende Februar 1816, 41 Wölfe erlegt, noch im Jahre 1819 im Kreise Wongrowitz 16 Kinder und 3 Erwachsene von Wölfen gefressen."

¹⁵Thus in note 6 was mentioned Herodotus' (484-425 B. C.) statement about the Neurians. The oldest werewolf legend, according to Hertz, is that of Lykaon, the son of Pelasgos, the first king of ancient Arcadia. These Arcadians lived as huntsmen and shepherds. According to J. Oppert (*Andree*, p. 65; and notes 6 and 9) the werewolf superstition existed amongst the Assyrians; and Andree states, the oldest Hellenic werewolf myth is found in Pausanias (died 467 B. C). In the Norse "Edda" we find Odin's wolves, also Sköll, Hati and Fenrir. In the *Völsunga Saga*, Sig-

The point in common everywhere is the transformation of a living human being into an animal, into a wolf in regions where the wolf was common¹⁶ into a lion, hyena or leopard in Africa, where these animals are common; into a tiger or serpent in India;¹⁷ in other localities into other animals characteristic of the region.¹⁸ Among Lapps and Finns occur transformations into the bear, wolf, reindeer, fish or birds; amongst many North Asiatic peoples, as also some American Indians, into the bear; amongst the latter also into the fox, wolf, turkey or owl; in South America, besides into a tiger or jaguar, also into a fish, or serpent. Most universal though it seems was the transformation into wolves or dogs.¹⁹

As the superstition is so widespread—Germany, Eastern Europe, Africa, Asia, America, it either arose at a very early time,

mund and Sinfjotli become wolves. For other reflections of the fear in which wolves were held, see the 10th century ms. of the "Wiener Hundesege" against male and female wolves (Braune, *Althochdeutsches Lesebuch*, 6. aufl. 1907, p. 85). Jacob Grimm,—"Geschichte der deutschen sprache s. 233:—"Unsere thierfabel stellt vortreflich das gebannte raubthier des waldes dar, und lehrt die nähe des wolfs und fuchses."

C. Lemcke, *Aesthetik*, 6. aufl. II. 1890, s. 562:—"In die ältesten Zeiten hinauf reicht auch bei Jägervölkern die Tiersage, in ihrer Weise zum Teil die Eigentümlichkeiten der Tiere erklärend, ihr Gebahren erzählend. Die furchtbaren und die listigen Tiere boten sich am besten dar. . . Wo die Menschen städtisch beisammen wohnen, bleibt Tier Tier; wo sie einsamer mit Tieren leben, bekommen diese eine höhere Bedeutung. So wird dem Wäldler Bär und Wolf zum ebenbürtigen Räuber und Kämpfer, menschlicher aufgefasst zum Gegner voll Mut, List, Rachsucht, der Gedanken hat wie der Mensch selbst."

¹⁶Volhynia, Europe, Northern Asia. Formerly, according to Andree, p. 65, the wolf was as common throughout Europe as it is to-day in Russia. Hirt, *Die Indogermanen*, I. 187, says: "Der Wolf ist überall in Europa verbreitet gewesen, der Bär ist aber ganz sicher ein Waldtier."

¹⁷Note 9.

¹⁸Cf. note 9, *Encyc. Brit.*

¹⁹Leubuscher, p. 1:—"Weil die Verwandlung vorzugsweise in Hunde und Wölfe geschehen sollte, so erhielt die Krankheit den namen Lykanthropie."

when all these peoples were in communication with each other²⁰ or else, in accord with another view of modern science, it arose independently in various continents in process of the natural psychological development of the human race under similar conditions.

The origin of the superstition must have been an old custom of primitive man's of putting on a wolf's or other animal's skin²¹ or dress, or a robe.²² Thus Leubuscher,²³ says: "Es ist

²⁰Or as Mogk in Paul's Grd., III. 272 expresses it, for example amongst the West Indogermanic peoples when they still formed a whole, as shepherds, by whom the wolf as robber of herds was especially feared. Leubuscher, p. 55 writes: "Die meisten Lykanthropen waren Hirten, die im Freien lebten, mit Tieren viel verkehrten, und der Wolf schwebte ihrer Einbildungskraft am öftersten vor, weil sie am meisten damit zu kämpfen hatten. Wenn das Gespenst des Wehrwolves sich in Einzelnen als Krankheit erhob, war die Gegend wahrscheinlich von Wölfen besonders beunruhigt worden, und wahrscheinlich manche Mordthat nur von Wölfen begangen." Ethn. Rep. 1888-89, p. 282:—"The Dakotas have long believed in the appearance from time to time of a monstrous animal that swallows human beings. The superstition was perhaps suggested by the bones of mastodons, often found in the territory of those Indians."

²¹Ethn. Rep. 1893-94, p. 267:—"In celebrations it is possible that the foxskin so universally worn by the animistic personifications is a survival comparable with the skin of the animal in which formerly the whole body was clothed."

²²Hertz, p. 17, gives the origin as follows: "In der ältesten Naturreligion ist die Gottheit des Todes und der winterlichen Erde als Wolf gedacht. Ihre Priester trugen wohl in der Vorzeit Wolfsfelle und hatten nach dem Volksglauben die Gabe, sich in das Tier der Gottheit zu verwandeln. Der Wolf, als das schnelle, kampfgewandte Tier, war zum raschen Zurücklegen weiter Wege und zur Erlegung von Feinden besonders geeignet. Darum nahmen die Götter und die zauberbegabten Menschen zu solchen Zwecken Wolfsgestalt. Der Wolf ist von Natur gefährlich und wurde darum als diabolisch gedacht, und beim Werwolve auch ist Drang nach Mord und Zerstörung die Hauptsache. Die Ursprünge des Werwolfglaubens waren also 1. religiöse Vorstellungen, 2. Rechtsvorstellung (der friedlose Mörder ist ein Wolf bei Griechen und Germanen); 3. die Geisteskrankheit der Lykanthropie." Page 51. "Die Verwandlung in Wölfe geschieht vorzugsweise durch Wolfshemden." Page 57: "Dass die von allem menschlichen Verkehr abgeschnittenen Walddüchtigen sich in Tierfelle kleideten, ist nahe liegend."

²³Page 46. See also note 9.

der Mythenkreis eines jeden Volkes aus einfachen wahren Begebenheiten hervorgewachsen."^{24,25} Likely also the notion of attributing speech to animals originated from such disguising or dressing of men as animals. In the following we shall examine into primitive man's reasons for putting on such a skin or robe.

Primitive man was face to face with animal foes, and had to conquer them or be destroyed. The werewolf superstition in Europe arose probably while the Greeks, Romans, Kelts and Germanic peoples were still in contact with each other, if not in the original Indo-Germanic home, for they all have the superstition (unless, as above, we prefer to regard the belief as arising in various localities in process of psychical development under similar conditions; namely, when people still lived principally by the chase.²⁶) Probably the primitive Indo-European man before and at the time of the origin of the werewolf superstition, was almost helpless in the presence of inexorable nature. This was before he used metal for weapons. The great business of life was to secure food. Food was furnished from three sources, roots, berries, animals, and the most important of these was animals.²⁷

²⁴Similarly Dilthey, *Erlebnis und Dichtung*, 1906, p. 153 fol.;—"Ist so die Einbildungskraft in Mythos und Götterglauben, zunächst gebunden an das Bedürfnis des Lebens, so sondert sie sich doch allmählich im Verlauf der Kultur von den religiösen Zweckbeziehungen und erhebt jene zweite Welt zu einer unabhängigen Bedeutsamkeit"—like Homer, Dante, etc. See note 20, close, and *Encyc. Brit.*, *Lycanthropy*:—"Insane delusions must reflect the usages and beliefs of contemporaneous society."

²⁵Notes 20, 21 and 27.

²⁶See note 15.

²⁷Grinnell, *Story of the Indian*, p. 54, says:—"Traces of the fear in which buffalo were held may still be discovered in the traditional stories of certain tribes, which set forth how, in those days," [i. e. in the stone age] "before men were provided with arms, the buffalo used to chase, kill, and eat the people. Such tales show very clearly how greatly the buffalo were dreaded in ancient times, and such fear could hardly have arisen save as the result of actual experience of their power to inflict injury and death." Pliny informs us how the Romans kept the wolf out of their

Without efficient weapons, it was difficult to kill an animal of any size, in fact the assailant was likely himself to be killed. Yet primitive man had to learn to master the brute foe. Soon he no longer crouched in sheltered places and avoided the enemy, but began to watch and study it, to learn its habits, to learn what certain animals would do under certain circumstances, to learn what would frighten them away or what would lure them on. So at least the large animals were to early man a constant cause of fear and source of danger; yet it was necessary to have their flesh for food and their skins for clothing.²⁸

Very soon various ingenious contrivances were devised for trapping them. No doubt one primitive method was the use of decoys to lure animals into a trap. Some could be lured by baits, others more easily by their kind. Occasionally masks were used,²⁹ and similarly, another form of the original decoy was no doubt simply the stuffed skin of a member of the species, whether animal or bird, say for example a wild duck.³⁰ Of course the

fields, see Grimm, *Teutonic Mythology*, III. 1241. Whether the Indians lived on the steppes, in the woods, on the coast, or in the mountains, the animals were their whole study. They moved with the animals, followed them for food.

²⁸ Note 27.

²⁹ *Ethn. Rep.* 1881-82, p. 122, note:—It seems that masks were occasionally used as decoys. . . Next to the otter the most valuable animal in the estimation of the Kadiak men, is the species of seal or sea-dog called by the Russians *nerpa*. The easiest manner of taking it is to entice it toward the shore. A fisherman, concealing the lower part of his body among the rocks, puts on his head a wooden cap or rather casque resembling the head of a seal and makes a noise like that animal. The unsuspecting seal, imagining that he is about to meet a partner of his own species, hastens to the spot and is instantly killed. Compare note 57.

³⁰ *Ethn. Rep.* 1896-97. I. 132:—Bering Strait Eskimo stuff rudely the skin of the bird called ptarmigan, and mount it upon a stick which holds the head outstretched, then imitate the call of the bird, which is trapped in the net attached to the decoy. Other decoys are made by molding soft snow into the form of a bird; for the ptarmigan, brown moss is put around the neck for plumage. The call then brought the real birds.

hunter would soon hit on the plan of himself putting on the animal skin, in the case of larger animals; that is, an individual dressed for example in a wolf's skin could approach near enough to a solitary wolf to attack it with his club, stone or other weapon, without exciting the wolf's suspicion of the nearness of a dangerous foe.³¹ So the animal disguise, entire or partial, was used by early man acting in the capacity of a decoy, firstly, to secure food and clothing. Secondly, he would assume animal disguise, whole or partial, in dancing and singing; and both these accom-

³¹Thus G. B. Grinnell, *Story of the Indian*, p. 61, in his description of the primitive Indians' method of trapping buffalo, says: "Some men went forth naked, others carried a dress made of the entire skin of a buffalo, the head and horns arranged like a buffalo head, while the rest of the skin hung down over the wearer's back," etc. This "caller" went near to a herd of buffalo, got them in pursuit of him, then led them into the trap, a chute, or to a precipice, the fall from which often proved fatal to the entire herd. Again, in *Ethn. Rep.* 1884-85, p. 484, about Central Eskimo seal hunting, is stated: If a hunter is close to an animal he imitates its movements. Some utter sounds similar to those of a blowing seal. "The sealskin clothing makes man and seal look so extremely alike that it is difficult to distinguish one from the other at some distance." And on p. 508, about deer hunting: In a plain the Central Eskimos carry guns on their shoulders, two men going together, so as to resemble the antlers of a deer. The men imitate their grunting. If they lie on the ground at some distance they greatly resemble the animals themselves. According to Ross the "inhabitants of Boothia imitate the appearance of the deer, the foremost of two men stalking a herd bearing a deer's head upon his own." *Ethn. Rep.* 1888-89, p. 534:—"The old manner of hunting antelope and deer: the hunter would disguise himself by covering his head with the head and skin of an antelope, and so be enabled to approach the game near enough to use his bow and arrow. In a similar manner the Hidatsa would mask themselves with a wolfskin to enable them to approach buffalo." *Ethn. Rep.* 1901-02, p. 439:—Two of the party of hunters (Zuñi) out after deer "wear cotton shirts with sleeves to the elbow, the front and back of the shirt being painted to represent as nearly as possible the body of the deer; the hands and the arms to the elbow and also the sleeves are colored to represent the deer's forelegs. Each wears the skin of a deer's head over his head. . . In this dress the two huntsmen imitate as closely as possible, even to the browsing, the game they would catch."

plishments seem to have arisen from the imitation of the motions and cries of animals,³² at first to lure them, when acting as a decoy. With growth of culture came growth of supernaturalism, and an additional reason for acquiring dance and song was to secure charms against bodily ills,³³ and finally enlivenment.³⁴ In both dance and song, when used for a serious purpose, the performers imagined themselves to be the animals they were imi-

³²Ethn. Rep. 1897-98, I. 352:—Tradition says the Iroquois derived the music and action of the Buffalo dance while on an expedition against the Cherokee, from the bellowing and the movements of a herd of buffalo which they heard for the first time 'singing their favorite songs,' i. e. bellowing and snorting." Also note 33.

³³Ethn. Rep. 1897-98, I. 266, gives a song to prevent frostbite. The wolf's, deer's, fox's, opossum's feet it is held never become frostbitten. After each verse of the song, the singer imitates the cry and the action of the animal. The words used are archaic in form and may be rendered 'I become a real wolf, etc.'" The song runs:

1. Tsûñ' wa' 'ya-ya' (repeated four times), wa+a! (prolonged howl). The singer imitates a wolf pawing the ground with his feet.

2. Tsûñ'-ka' wi-ye' (four times), sauh! sauh! sauh! sauh! (imitating the call and jumping of a deer).

3. Tsûñ'-tsu' 'la-ya' (four times), gaih! gaih! gaih! gaih! (imitates barking and scratching of a fox).

4. Tsûñ'-sî'-kwa-ya' (four times), kî+ (imitates cry of the opossum when cornered, and throws his head back as that animal does when feigning death).

³⁴Ethn. Rep. 1881-82, p. 323, about the Omaha Coyote dance performed by warriors whenever it was thought necessary to keep up their spirits, in which each had his robe about him and imitated the actions of the coyote, trotting, glancing around, etc. Page 348 describes the Omaha Buffalo dance, in which each of four men used to put the skin of a buffalo over his head, the horns standing up, and the hair of the buffalo head hanging down below the chest of the wearer. The various movements of the buffalo were imitated by the dancers. Pages 348-349, the Omaha wolf dance, by the society of those who have supernatural communication with wolves. The dancers wear wolfskins, and dance in imitation of the actions of wolves. Similarly they performed the grizzly bear dance, horse dance, etc.

tating;³⁵ and in the dance they wore the skins of the animals represented.³⁶

Probably as long as animal form, partial or entire, was assumed merely for decoys and sport (early dancing), for peaceful purposes therefore, such people having whole or partial animal shape were not regarded as harmful to man,³⁸ just as wise women began to pass for witches only when with their art they did evil.³⁹ A similar development can be traced in the case of masks.⁴⁰ It was some time before man could cope with food-and clothing-furnishing animals that were dangerous to life, though these are the ones he first studied;⁴¹ and we cannot presuppose that he disguised to represent them until he could cope with them, since the original purpose of the disguise was to secure food and clothing. Thus far then we see whole or partial disguise as animals used to secure *food* and *clothing* when acting as decoys to lure animals; and in *dancing*.

³⁵ Notes 22, 34 and 37.

³⁶ See notes 34 and 37.

³⁷ Similarly in the use of masks (see note 57). See Wundt, *Völkerpsychologie* II. i. 412 fol., and in regard to this *Zeitschrift für deutsche Philologie*, XXXVIII. 1906, ss. 558-568:—"Der maskierte mensch ist der ekstatische Mensch. Mit dem anlegen der maske versetzt er sich in ekstase, fühlt er sich in fremde lebensvorgänge ein, eignet er sich das wesen an, mit dem er sich durch die maske identifiziert." Für den naiven menschen, wie für das kind, ist die maske durchaus nicht blosser schein, sondern wirkender charakter. Der augenblickstanz wurde zum zaubertanz. Die naturvölker verwenden ihre masken nur bei den feierlich-ernsten zaubertänzen, nicht zu ihrer burlesken mimik; die tänzer sind in Tiermasken, etc.

³⁸ Amongst American Indians for example a man transformed into a bear and vice versa is usually regarded as benevolent (*Ethn. Rep.* 1880-81, p. 83). See, also, Grimm, *Teutonic Mythology*, III. 1097:—In Norse accounts also we find transformation into a bear, for the bear was regarded as rational and was esteemed.

³⁹ Note 84.

⁴⁰ See note 57a.

⁴¹ Notes 27 and 42.

Fourthly, primitive man would put on an animal's skin or dress when out as *forager* (or robber) or *spy*, for the purpose of avoiding detection by the enemy. The Pawnee Indians for example,⁴³ were called by neighboring tribes *wolves*, probably not out of contempt, since it may be doubted that an Indian feels contempt for a wolf any more than he does for a fox, a rabbit, or an elk, but because of their adroitness as scouts, warriors and stealers of horses; or, as the Pawnees think, because of their great endurance, their skill in imitating wolves so as to escape detection by the enemy by day or night; or, according to some neighboring tribes, because they prowl like wolves⁴⁴ "have the endurance of wolves, can travel all day and dance all night, can make long journeys, living on the carcasses they find on their way, or on no food at all." . . . And further, "The Pawnees, when they went on the warpath, were always prepared to sim-

⁴²The important consideration in the mind of primitive man was whether certain things were harmful or useful. See Behaghel, *Die deutsche Sprache*, p. 98:—"Die grossen Tiere und die mächtigen Bäume, die Tiere und Pflanzen, die für die *Ernährung* und *Bekleidung* des Menschen von Bedeutung sind, die Tiere, die sein Leben *bedrohen*, sie haben viel früher sprachliche Bezeichnung gefunden, als der unscheinbare Käfer im Sande, als die kleine Blume des Waldes. So kommt es, dass die Namen der grösseren Tiere, der grossen Waldbäume, der wichtigsten Getreidearten allen germanischer Stämmen gemeinsam sind, einzelne sogar, wie *Wolf*, *Kuh*, *Ochse*, *Birke*, *Buche*, *Erle*, *Gerste* mit den Benennungen anderer indogermanischer Völker übereinstimmen." Doubtless animals occupied their attention sooner than plants. See Wundt, *Völkerpsychologie*, II. 412 fol., about the *maskentanz*: "Überhaupt haben die Tiermotive weit früher Berücksichtigung erfahren als die Pflanzenmotive."

See note 95.

⁴³G. B. Grinnell, *Pawnee hero stories and folk-tales*, N. Y., Scribners, 1893, p. 245, fol.

⁴⁴Jacob Grimm, *Geschichte der deutschen Sprache*, s. 233: Ein sabinischer stamm hiesz Hirpi (lat. *hirpus* bedeutet *wolf* in sabinischer oskischer Mundart), weil den einwandernden ein wolf führer geworden war, oder nach anderer sage sie wölfe gejagt hatten und gleich wölften raubten, d. h. im sinn des deutschen ausdrucks friedlos waren.

ulate wolves. . . . Wolves on the prairie were too common⁴⁵ to excite remark, and at night they would approach close to the Indian camps." . . . The Pawnee starting off on the warpath usually carried a robe made of wolf skins, or in later times a white blanket or a white sheet; and, at *night*, wrapping himself in this, and getting down on his hands and knees, he walked or trotted here and there like a wolf, having thus transformed himself into a common object of the landscape. This disguise was employed by *day* as well, for reconnoissance. . . . While the party remained hidden in some ravine or hollow, one Indian would put his robe over him and gallop to the top of the hill on all fours, and would sit there on his haunches looking all over the country, and anyone at a distance who saw him, would take him for a wolf. It was acknowledged on all hands that the Pawnees could imitate wolves best. "An Indian going into an enemy's country is often called a wolf,"⁴⁶ and the sign for a scout is made up of the signs *wolf* and *look*.⁴⁷ Should any scout detect danger, as at *night* when on duty near an encampment, he must give the cry of the coyote.⁴⁸

The idea of the harmfulness to other men of a man in animal form or dress became deeply seated now, when men in animal disguise began to act not only as decoys for animals dangerous to life, but also as scouts (robbers⁴⁹—and later as posses-

⁴⁵The werewolf story could arise only where the animal, wolf, tiger or lion, etc., was common; and likewise the werewolf tales gradually died out when the animals became rare or extinct. See note 11.

⁴⁶Grinnell, p. 245.

⁴⁷The Watusi of East Africa distinctly describe all wild beasts save their own totem-animals as *enemy-scouts* (Encyc. Brit. under Lycanthropy).

⁴⁸Ethn. Rep. 1881-82, p. 323. See also Grinnell, *Story of the Indian*, p. 208: The wolf was believed, in the animals' council, to be able to give the Indian the power to creep right into the midst of the enemy's camp without being seen.

⁴⁹See note 53.

sors of supernatural power, when growth of culture brought with it growth of supernaturalism⁵⁰); when people began to associate, for example, the wolf's form with a lurking enemy.⁵¹

All uncivilized tribes of the world are continually on the defensive, like our American Indian; they all no doubt on occasion have sent out scouts who, like our American Indians, to avoid detection, assumed the disguise of the animal most common to the special locality in question, just as to-day they are known to disguise in animal skins for purposes of plunder or revenge.^{52 53}

⁵⁰ See note 57-b.

⁵¹ So originally the germanic god *Logi* was not an evil god. *Logi* meant the natural force of fire; *Loki* meant the same, but the burly giant has been made a sly, seducing villain (Grimm, Teut. Myth. I. 241). A son of *Loki*, *Fenrisúlfr*, appears in wolf's shape among the gods. Perhaps association with the wolf is in part responsible for the transformation of *Logi* (*Loki*) from a good to an evil god.

⁵² Encyc. Brit. under Lycanthropy:—In modern savage life we find beastform of chiefs or spirits, medicine men, some hunt in beast form for the community; others are said to assume beast form in order to avenge themselves justly on enemies; others for love of bloodshed and cannibalism. See also note 58.

⁵³ No doubt some of these men disguised as wolves won considerable fame through their skill and bravery, as we should judge from such proper names as *Rudolf*, which means really *Ruhmwolf*, *Ruhm* related to Gothic *hropeigs* "victorious," Sanskrit *kṛ* "to praise"; or *Adolf* from *Adalolf*, which means *Edelwolf*, originally, therefore, *Edelräuber*, for *wolf* meant originally about the same as *robber* (Kluge). So *robber* or *wolf* was originally a highly respectable appellation, at a time when men lived from robbery and the chase, either as searobbers, or mountain robbers, etc. (about this early profession see Hirt, *Die Indogermanen*, 1905, p. 268 fol.), and the profession was not looked on as a disgrace (see appellation "wolves" applied to Pawnees, p. 12.). Later we find such names as *Wulfla* "little wolf." Many Indian names are those of animals, such as Good Fox, Good Bear, Walking Bear, Conquering Bear, Rushing Bear, Stumbling Bear, Brave Bear, Bear Rib, Smoking Bear, Biting Bear, Bear-Looks-Back, Cloud Bear, Mad Bear, Mad Wolf, Lone Wolf, Lean Wolf, Wolf-Ear, Wolf-Robe, etc. See Ethn. Rep. 1882-83, p. 169: The names of Indians very often refer to some animal, predicating some attribute or position of that animal. For discussion of names, see note 111.

The kind of animal makes no difference, the underlying principle is the same; namely, the transformation of a living human being into an animal. The origin of the belief in such a transformation, as stated above⁵⁴ was the simple putting on of an animal skin by early man. The object of putting on animal skins was,

(1) To gain food. For this purpose the motions and cries of animals were imitated (origin of dancing and singing),⁵⁵ artificial decoys (like decoy ducks to-day)⁵⁶ and finally even masks were used.⁵⁷

⁵⁴ Ante p. 6.

⁵⁵ See (3) below.

⁵⁶ See ante p. 8.

⁵⁷ See note 4 and also Ethn. Rep. 1881-82, p. 73 fol. (see note 37):—The use of masks is worldwide. The origin and development of the use of masks is very much the same as the origin and development of the werewolf as given in the preceding pages. The wolfrobe and the mask, both originally useful devices, degenerated in unscrupulous hands into instruments for personal aggrandizement and gain. The use of the mask is described in the above report as follows:

a). It was used as a shield or protection for the face, for defense against physical violence, human or otherwise. It was therefore first used merely as a mechanical resistance to the opposing force; then secondly, still in the lowest grade of culture, it was used to inspire terror, to gain a moral influence over the opposing agent by hideousness or by symbolizing superhuman agencies. Now individual variations arose—devices for example derived or conventionalized from some predatory, shrewd or mysterious animal.

b). With growth of culture came growth of supernaturalism, and the mask came to be used in religious performances, as a part of the religious paraphernalia, like the shirts or girdles of the shamans. Ethn. Rep. 1896-97, I. 395:—"When worn in any ceremonial, . . . the wearer is believed to become mysteriously and unconsciously imbued with the spirit of the being which his mask represents."

c). Finally the element of humor enters in, and the mask is used for public amusements and games; by secret societies; as protection against recognition on festive occasions," etc., like the animal skins worn in dances.

(2) To secure clothing in cold climes by trapping or decoying animals, as in (1) above.

(3) The imitation when decoying, of the motions of animals led to dancing, and in the dances and various ceremonies the faces and bodies of the participants were painted in imitation of the colors of birds and animals, the motions of animals imitated and animal disguises used.⁵⁸

(4) Scouts disguised themselves as animals when out foraging, as well as for warfare,^{59 60} therefore for booty, and self-defense. Either they wore the entire skin, or probably later just a part of it as a fetich, like the left hind foot of a rabbit, worn as a charm by many of our colored people to-day.⁶¹

⁵⁸ Notes 32, 34, 33, ante p. 11.

⁵⁹ See p. 13.

⁶⁰ Ethn. Rep. 1888-89, p. 503:—Account of "a cloak or mantle made from the skin of a deer, and covered with various mystic paintings. It was made and used by the Apaches as a mantle of invisibility, that is, a charmed covering for spies which would enable them to pass with impunity through the country, and even through the camp of their enemies. In this instance the fetichistic power depends upon the devices drawn." The Apache have a similar fetich or charm. The symbols drawn were the rain-cloud, serpent lightning, raindrops and the cross of the winds of the four cardinal points. Ethn. Rep. 1889-90, p. 515:—Among the Hidatsa (Sioux) fetiches are especially the skins of the wolf. "When they go to war, they always wear the stripe off the back of a wolf skin, with the tail hanging down the shoulders. They make a slit in the skin through which the warrior puts his head, so that the skin of the wolf's head hangs down upon his breast." Finally the magic robes or shirts and girdles came to be a part of the regular paraphernalia of the shamans, or practisers of magic. In the folklore of all countries we find numerous notices of holy girdles.

Ethn. Rep. 1897-98, I. (Cherokee) 393: "Some warriors had medicine to change their shape as they pleased, so that they could escape from their enemies." Page 501: Such stories might be paralleled in any tribe.

⁶¹ See further development in note 64.

(5) For purposes of revenge,^{62, 63} personal or other. For some other personal motive of advantage or gain, to inspire terror in the opposing agent by hideousness.

(6) To inspire terror in the opposing agent by symbolizing superhuman agencies.⁶⁴ So now would arise first a belief in

⁶² Note 52.

⁶³ As an example of the motive of vengeance, or pure brutality, we cite from Andree, p. 69:—People in the interior of Africa who understand magic, transform themselves into lions and go about killing people. See also below, note 65, where the wolf-man of Abyssinia kills his enemy and sucks his blood, and also kills other wolf-men it meets, the question being one of the survival of the fittest, that is the strongest. All this takes place at *night*, which reminds us of our Pawnee Indian starting out at night in his wolf's robe, and trotting up to the hostile village to ascertain where his enemies' horses are tied, so as to steal them when all are asleep (Grinnell's Pawnee hero stories and folk-tales, p. 246, and pp. 70-73). Ethn. Rep. 1887-88, p. 461:—"To recover stolen or lost property, especially ponies, is one of the principal tasks imposed upon the so-called medicine-men" (shamans).

⁶⁴ As superstition waxed strong, no doubt the wolf robe was put on not merely to make the wearer look just like a common object of the landscape, but also because the wearer of the disguise was supposed to take on the characteristics of the animal he represented (swiftness, boldness, etc.), as in the case of masks (see note 57), and finally the wearer of such a robe was believed to actually become transformed, like the wearers of the werewolf shirt, for example in Germany. Wolves were regarded as good hunters who never fail, Ethn. Rep. 1897-98, I. 280, also p. 264:—"The wolf is revered by the Cherokee as hunter and watchdog of Kanáti; therefore we can understand how the wolf disguise, as conferring the quality of unerring huntsmanship, might be in especial favor amongst those who gained their food from the chase. Similarly the singing of songs imitating the cries of certain animals was supposed to confer a characteristic of the animal in question (see note 33).

Ethn. Rep. 1901-02, p. 394:—"To gain animal characteristics a wizard attached crow and owl plumes to his head that he might have the eyes of the crow to see quickly the approach of man, and the eyes of the owl to travel by night. He flapped his arms, . . . A Zuñi man hearing a cry like an owl, yet human, looked about him and found a man whom he recognized as a Zuñi. "Aha!" said he, "why have you those plumes upon your head? Aha, you are a sorcerer," etc.

An example of the transforming power of the *robe* we find in Bulletin

superhuman power or attributes,⁶⁵ and then,

26, of the Bureau of American Ethnology, Washington, 1901, Kathlamet texts, p. 156 fol.:—A woman ate of some of the fat of a bitch, gave birth to five male dogs and one female dog. When they grew older, she discovered one day that they could transform themselves into real children. While they were down at the beach, she entered the house, and now she saw the dog *blankets*. She took them and burnt them. Then the children retained their human form (like Sigmund and Sinfjötli in the Volsungasaga). Page 58 fol., is the Myth of the Elk, according to which an old man transformed himself into an elk by putting on an elkskin.

W. Golther, *Handbuch der germanischen mythologie*, 1895, p. 100, writes, *Die Fähigkeit von Leuten, die sich verwandeln können, heisst 'sich zu häuten, die Hülle zu wechseln'*. Das Umwerfen eines äusserlichen Gewandes kann den Wechsel der Gestalt hervorbringen, wie Freyjas Federgewand, die Schwan- und Krähenhemden der Valkyrjen, Odins Adlergewand. Die Wolfsgewänder (úlfahamir) wenn angelegt, verwandeln den Menschen zum Wolfe'. See also Meissner, Ritter Tidel, *Zeitschrift für deutsches altertum*, XLVII. 261.

⁶⁵ *Ethn. Rep.* 1901-02, p. 392:—The owner of fine beads fears that some witch, prompted by jealousy, will strike him with disease.

As another example of the pretended assumption of superhuman powers to gain influence over others, we may cite the instances given by Andree, p. 68 fol., according to which Livingston met in Africa a native said to have power to transform himself into a lion. As lion he would stay for days and months in the *forest*, in a sacred hut, to which however his wife carried beer and food for him, so we may judge that at least this lion did not cause much devastation amongst the wild beasts. He was able to reassume human form by means of a certain medicine brought him by his wife. Again Andree, p. 69:—In Banana, Africa, the members of a certain family transform themselves in the *dark* of the *forest* into leopards. They throw down those they meet in the forest, but dare not injure them nor drink their blood, lest they remain leopards. (See note 83.)

The motive of personal gain is exemplified by our American Indians, who put on a wolf's mantle to steal, or to recover stolen animals (Grinnell, Pawnee hero stories, p. 247, also the story of robbery entitled *Wolves in the night*, p. 70 fol.). Similarly in Abyssinia, Andree, p. 69, where the lowest caste of laborers are believed to have power to transform themselves into hyenas or other animals, as such, plundering graves. They employ naturally various artifices to help along their cause, since it yields such returns. They are reported to act like other folk by day, at *night* though to assume the ways of wolves, kill their enemies and suck their blood, roaming about with other wolves till morning. They are supposed

(7) Witchcraft.⁶⁶ It is very easy to see why it was usually

to gain their supernatural powers by a secret beverage made from herbs. They are not likely to be discovered to be only sham animals, since their roaming and plundering is done in the *night*; in the daytime they of course conceal the animal skins (see Andree, p. 72).

Ethn. Rep. 1880-81, p. 68:—Among the Chaldeans, Egyptians and Greeks, the success of magic depended upon the ignorance of the masses and the comparative learning of the few who practised it. Among the American Indians the medicine-man and the more expert sorceress have little learning above that of the body of the tribe, and their success depends entirely upon their own belief in being supernaturally gifted, and upon the faith and fear of their followers.

The Iroquois believed in people who could assume a partly animal shape. See Grinnell, Blackfoot lodge tales, p. 79:—"An old blind wolf with a powerful medicine cured a man, and made his head and hands look like those of a wolf. The rest of his body was not changed. He was called a man-wolf."

⁶⁶Ethn. Rep. 1880-81, p. 73:—Witches could and did assume animal shapes. For example a dog seen by a man which had fire streaming from its mouth and nostrils. It was *night*. The man shot at it, and the next morning tracked it by the marks of blood from its wound. At a bridge a woman's tracks took the place of the dog's, and finally he found the woman. She had died from the effect of the shot. Page 73: Likewise a hog, when pursued, disappeared at a small creek, and finally reappeared as an old man, who said it was he, whom they had been chasing. So they, the pursuers, knew he was a witch. Page 74: A Canadian Indian one *evening* pursued a white bull with fire streaming from its nostrils. He had never seen a white bull on the reservation before. "As it passed in front of a house it was transformed into a man with a *large white blanket*, who was ever afterward known as a witch."

Ethn. Rep. 1901-02, p. 395:—A man going out at *night* noticed a queer-looking burro. Upon his return home he was told that a large cat had entered the house. He went out again, discovered a man wrapped in a blanket, but not in the Zuni fashion, his head was sunk low in the blanket. He knew this creature to be a wizard.

Ethn. Rep. 1887-88, p. 458:—That the medicine man (Shaman) has the faculty of transforming himself into a coyote and other animals at pleasure and then resuming the human form, is as implicitly believed in by the American Indians as it was by our own forefathers in Europe. And page 459: The Abipones of Paraguay credit their medicine-men with power to put on the form of a tiger. The medicine-men of Honduras claimed

the so-called medicine-men (more correctly Shamans), who claimed such transformation power, because they received remuneration from their patients.⁶⁷

the power of turning themselves into lions and tigers. Also the Shamans of the Nicaraguans possessed similar power. Hertz, p. 133 fol.:—"In der christlichen Zeit wurde der heidnische Cultus Teufelsanbetung und hier entstand mit dem Hexenglauben die Vorstellung von Menschen, die sich mit Hilfe des Satans aus reiner Mordlust zu Wölfen verwandeln. So wurde der Werwolf das Bild des tierisch Dämonischen in der Menschennatur."

⁶⁷ Ethn. Rep. 1887-88, p. 467:—"The medicine-men of the Apache are paid at the time they are consulted, the priest beforehand among the Eskimo. Ethn. Rep. 1889-90, p. 187: "The magnitude of the disease is generally measured by the amount of the patient's worldly wealth." Page 416:—"Sioux sorcerers prepared love-potions for those who bought them. Ethn. Rep. 1901-2, p. 568:—"The shaman, like the theurgist is usually paid after each visit with calico, cotton, or food, according to the wealth of the family, since it is always understood that these doctors expect proper compensation for their services." Page 387:—"The Zuñi doctor is paid according to his reputation." Grinnell, Blackfoot lodge tales, p. 284: "In early days if a man remained sick for three or four weeks, all his possessions went to pay doctors' fees."

Ethn. Rep. 1887-88, p. 462 fol.—The American Indian's theory of disease is the theory of the Chaldean, the Assyrian, the Hebrew, the Greek, the Roman—all bodily disorders are attributed to the maleficence of spirits (that is of animal spirits, ghosts or witches), who must be expelled or placated. Gibberish was believed to be more potential in magic than was language which the practitioner or his dupes could comprehend. Page 468:—"The medicine-men are accused of administering poisons to their enemies. Ethn. Rep. 1889-90, p. 416:—"Sioux sorcerers were thought to cause the death of those persons who had incurred their displeasure. Ethn. Rep. 1887-88, p. 581:—"When an Apache or other medicine-man is in full regalia he ceases to be a man, but becomes, or tries to make his followers believe that he has become, the power he represents." The Mexican priests masked and disguised, and dressed in the skins of the women offered up in sacrifice.

So the shaman practiced sorcery, medicine and was a priest. Ethn. Rep. 1887-88, p. 594:—"The Indian doctor relied far more on magic than on natural remedies. Dreams, beating of the drum, songs, magic feasts and dances, and howling were his ordinary methods of cure. Grinnell, Story of the Indian, p. 210 fol.:—"They have 'firm confidence in dreams.'" "Their belief in a future life is in part founded on dreams," etc.

(8) Finally dreams⁶⁸ and exaggerated reports gave rise to fabulous stories.⁶⁹

We have discussed (1), (2), and (3);⁷⁰ for an example under (4) we have cited the practices of American Indians.⁷¹ It is probable that about now (at the stage indicated in (4) above), what is known as the real werewolf superstition (that of a frenzied, rabid manwolf) began to fully develop. The man in wolf-skin was already a lurking thief or enemy, or a destroyer of human life. To advance from this stage to the werewolf frenzy, our primitive man must have seen about him some exhibition of such a frenzy, and some reason for connecting this frenzy particularly with, say the wolf. He did see insane persons, and the connecting link would be the crazy or mad wolf (or dog, as the transformation was usually into a wolf or dog,⁷²) for persons bitten by it usually went mad too.⁷³ The ensuing frenzy, with the con-

⁶⁸ Note 67, close.

⁶⁹ An example of fabulous invention for pure personal gain occurs Andres, p. 77: If the Greenlanders catch too many seal at one place, the latter will take a terrible revenge. Assuming human form, they attack their enemy in the *night* at his home. This is the transformation of an animal into a man, but the inventor of the story was no doubt looking towards his own gain. It is the same old fight for seal protection which in another form is still going on to-day. Andres, p. 72. In Siam stories are told of people who by magic formulae become tigers and roam about at *night* in search of booty. One of the man-tigers was actually a priest.

⁷⁰ Ante pp. 7, 8, 9.

⁷¹ Ante p. 12 fol.

⁷² See notes 19 and 74.

⁷³ Grinnell, Blackfoot lodge tales, p. 283: "It is said that wolves, which in former days were extremely numerous, sometimes went crazy, and bit every animal they met with, sometimes even coming into camps and biting dogs, horses and people. Persons bitten by a mad wolf generally went mad, too. They trembled and their limbs jerked, they made their jaws work and foamed at the mouth, often trying to bite other people. When any one acted in this way, his relatives tied him hand and foot with ropes, and, having killed a buffalo, they rolled him up in the green hide, built a fire on and around him, leaving him in the fire until the hide began to dry and burn. Then they pulled him out and removed the buffalo hide, and he was cured. This was the cure for a mad wolf's bite."

sternation it occasioned, soon appealed to certain primitive minds as a good means of terrorizing others. Of these mad ones some no doubt actually had the malady; others honestly believed they had it and got into a frenzy accordingly; others purposely worked themselves up into a frenzy in order to impose on the uninitiated.⁷⁴ Later, in the Middle Ages, when the nature of the real disease came to be better understood, the werewolf superstition had become too firmly fixed to be easily uprooted.

We have discussed (5), (6), (7), and (8) in the notes.⁷⁵ As further examples of the development into fabulous story,⁷⁶ we may cite any of those stories in which the wild werewolf, or animal-man is represented as roaming the land, howling, robbing, and tearing to pieces men and beasts, until he resumes his human form. Thus an early scout in animal garb would be obliged to live on food he found on his way, and later fabulous report would represent him as himself when in disguise possessing the attributes of the animal he represented, and tearing to pieces man and beast. For such an account see Andree,⁷⁷ concerning what

⁷⁴Sometimes the professionals even became possessed of a monomania themselves, as in witchcraft. Andree goes into this widespread disease or delusion (of the first century till late in the middle ages), p. 76 fol.: "The sick" ones would prowl about burial places *at night*, imagining themselves to be *wolves* or *dogs*, and go about barking and howling. In the middle ages such people would even kill children and grown people. When they came to themselves again, or were cured, they claimed to know nothing of what had happened. Ethn. Rep. 1888-89, p. 491: Amongst the Shamans feats of jugglery or pretended magic rivaling or surpassing the best of spiritualistic seances are recounted. Page 207: The use of robes made of the hides of buffalo and other large animals, painted with shamanistic devices, is mentioned. Page 235: The speaker terms himself a wolf spirit, possessing peculiar power.

⁷⁵Notes 63, 64, 65, 66, 67, 69.

⁷⁶See (8) above.

⁷⁷Page 71.

eyewitnesses reported of the wild reveling over corpses of the hyena-men of Africa. Naturally the uninitiated savage who witnessed such a sight would become insane, or at least would spread abroad such a report as would enhance the influence of the hyena-men far and wide. Some savages, as in Africa,⁷⁸ came to regard any animal that robbed them of children, goats or other animals, as a witch in animal form;⁷⁹ just as the American Indians ascribe to evil spirits death, sickness and other misfortunes.

We can see how at first the man in animal disguise or an animal robe would go quietly to work, like the Pawnee scout;⁸⁰ how though, as soon as the element of magic enters in, he would try to keep up the illusion. At this stage, when the original defensive measure had become tainted with superstition, men would go about in the night time howling and holding their vile revels.⁸¹ Andree,⁸² narrates how a soldier in Northeast Africa shot at a hyena, followed the traces of blood and came to the straw hut of a man who was widely famed as a magician. No hyena was to be seen, only the man himself with a fresh wound. Soon he died, however the soldier did not survive him long. Doubtless one of the magician class was responsible for the death of the soldier, just as we to-day put to death the man who so violates our laws, as to become a menace to our society, or as formerly kings killed those who stood in their way; or as

⁷⁸ Andree, p. 69.

⁷⁹ Ethn. Rep. 1889-90, p. 263, gives the following story of the origin of the wolf: "*The wolf* was a poor woman, who had so many children that she could not find enough for them to eat. They became so gaunt and hungry that they were changed into wolves, constantly roaming over the land seeking food."

⁸⁰ Ante p. 12 fol.

⁸¹ Ethn. Rep. 1885-86, p. 152: It is impossible to imagine the horrible howlings, and strange contortions that these jugglers (shamans) or conjurers make of their bodies, when they are disposing themselves to conjure.

⁸² Page 71.

religious sects murder those who dissent from their faith. These magicians, supposed to be men who could assume animal form, as a matter of fact do often form a class, are greatly feared by other natives, often dwell with their disciples in caves and at *night* come forth to plunder and kill.⁸³ It is to their interest to counterfeit well, for if suspected of being malevolent, they were put to death or outlawed, like criminals to-day.⁸⁴ Their frenzies were, as said above, in some cases genuine delusions; in other cases they offered, as one may readily imagine, excellent opportunities for personal gain or vengeance.⁸⁵

⁸³Andree, p. 70, gives an account of the chief magician (Abyssinia), who demands as yearly tribute of his subordinate animal-men the teeth of the persons whom they have killed during the year, with which he decorates his palace. See also pp. 72, 75, etc.: Ethn. Rep. 1885-86, p. 151, about sorcery among American Indians: Societies existed. The purposes of the society are twofold; 1. To preserve the traditions of Indian genesis and cosmogony, etc. 2. To give a certain class of ambitious men and women sufficient influence through their acknowledged power of exorcism and necromancy to lead a comfortable life at the expense of the credulous. Page 162: "Each tribe has its medicine men and women, an order of priesthood consulted and employed in all times of sickness. It is to their interest to lead these credulous people to believe that they can at pleasure hold intercourse with the *munedoods*," etc. Sometimes one family constitutes the class. See note 65; Andree, p. 69.

⁸⁴Grimm, Teut. Myth. III. 1104: To higher antiquity witches were priestesses, physicians, fabulous *night-wives*, never as yet persecuted. Maidens might turn into swans, heroes into werewolves, and lose nothing in popular estimation. The abuse of a spell was punished. A wise woman, healing sickness and charming wounds, begins to pass for a witch only when with her art she does evil. In course of time, when the Devil's complicity with every kind of sorcery came to be assumed, the guilt of criminality fell upon all personal relations with him. Ethn. Rep. 1901-2, p. 393: "Though the witch may be regarded as all powerful, none but the poor and unfortunate are condemned. Few others are even brought to trial—their prominence prevents public accusation." This again reminds us some of our customs; namely, that of overlooking the transgressions of the rich and powerful. See note 91, and for outlaws note 112.

⁸⁵Such artificial frenzies had a serious effect upon the body, and more particularly the eyes, so that many shamans (Siberia, America, etc.) become blind.

Only by instilling in their fellows a firm belief in this superstition and maintaining the sham, could the perpetrators of the outrages hope to escape punishment for their depredations, could they hope to plunder and steal with impunity.⁸⁶ So they prowled usually under the cloak of *night* or of the dark of the forest,⁸⁷ howled and acted like the animals they represented, hid the animal skin or blanket, if they used one,⁸⁸ in the daytime where they thought no one could find it, whereas the animal skin which was worn for defence, was put on either by day or night,⁸⁹ and one story recounts the swallowing of a whole goat, the man bellowing fearfully like a tiger while he did it.⁹⁰ Some of the transformed men claimed they could regain human form only by means of a certain medicine or by rubbing. The imposters were the criminal class of society that is still with us to-day,⁹¹

⁸⁶Encyc. Brit., XV. under Lycanthropy: In Prussia, Livonia and Lithuania, according to two bishops, werewolves were in the 16th century far more destructive than "true and natural wolves." They were asserted to have formed "an accursed college" of those "desirous of innovations contrary to the divine law." Also see note 90.

⁸⁷See ante p. 13, and notes 64, 65, 66, 69, 84, 102, 110.

⁸⁸Note 22 close, and note 102.

⁸⁹See ante p. 13.

⁹⁰Andree, p. 72. This same tiger-man in Asia killed a woman, whose husband set out in pursuit, followed him to his house, got hold of him later in his man shape and killed him. Feats similar to some performed by him are cited in Ethn. Rep. 1887-88, p. 470: The medicine-men of the Pawnee swallowed arrows and knives, and also performed the trick of apparently killing a man and bringing him back to life, like the Zuñi.

⁹¹Grimm, Rechtsalterthümer, II. 566: Hexen waren fast alle aus der ärmsten und niedrigsten Volksklasse (see note 84). Literary Digest, March 9, 1907, p. 378, article on Spiritualism and Spirituality: "Many, very many, spiritualists seem to care for communion with spirits only that they may more surely keep physically well, and earn their bread and butter and clothing the easier." Encyc. Brit. under Lycanthropy: The absurdity of the superstition would have much sooner appeared, but for the theory that a werewolf when wounded resumed human shape; in

no longer in werewolf form, but after all wolves in human dress, each maintaining his trade by deception and countless artifices, just as did the werewolf of old. Not unlike these shams are those of the American negro, who in church, when "shouting," that is, when stirred up by religious fervor, inflicts blows on his enemy who happens to be in the church, of course with impunity; for he is supposed to be under some outside control, and when the spell has passed off, like some of the delusionists mentioned,⁹² claims not to know what he (or generally she) has done. Similar also are the negro voodoo ceremonies, those of the fire-eaters, or any other sham.

The wolf disguise, or transformation into a werewolf was that most often assumed for example in Germanic lands.⁹³ The term *wolf* became synonymous with *robber*, and later (when the robber became an outlaw,⁹⁴) with *outlaw*, the robber and outlaw alike being called wolf and not some other animal (i. e., only the wolf-man surviving to any extent) firstly, because the wolf was plentiful; and secondly, because as civilization advanced, there came a time when the wolf was practically the only one of the larger undomesticated animals that survived.⁹⁵ We can

every case where one accused of being a werewolf was taken, he was certain to be wounded, and thus the difficulty of his not being found in beast form was satisfactorily disposed of.

⁹² Notes 57 and 67.

⁹³ Notes 9 and 19.

⁹⁴ Note 112.

⁹⁵ See note 11, also Ethn. Rep. 1897-98, I. 263: "The deer, which is still common in the mountains, was the principal dependence of the Cherokee hunter, and is consequently prominent in myth, folklore, and ceremonial." see note 42. Page 264: "The largest gens (clan) in the tribe bears the name of 'wolf people.'" Page 420: The Cherokee have always been an agricultural people, and their old country has a luxuriant flora, therefore the vegetable kingdom holds a far more important place in the mythology and ceremonial of the tribe than it does among the Indians of the treeless plains and arid sage deserts of the West.

notice this in our own United States, for example in eastern Kansas, where at night coyotes and even wolves are sometimes heard howling out on the prairie near woodlands, or in the pastures adjoining farms, where they not infrequently kill smaller animals, and dig up buried ones.⁹⁶ In Prussia also it is the wolf that survives to-day. American Indians, and other savages however do not restrict the transformations to the wolf,⁹⁷ because other wild animals, are, or were till recently, abundant amongst them. As civilization advances, one by one the animal myths disappear with the animals that gave rise to them (like that connected with the mastodon);⁹⁸ or else stories of such domestic animals as the pig, white bull, dog superseded them.⁹⁹ When this stage was reached, as time went on and means of successfully coping with the brute creation became perfected, the animals were shorn of many of their terrors, and finally such stories as Aesop's fables would arise.¹⁰⁰ This however was psychologically

⁹⁶The St. Louis "Westliche Post" for January 9, 1908, furnishes another example: A tame wolf which for the past two years has been a pet in a farmer's family at Marshfield, Wisconsin, escaped and attacked a chicken. The farmer's daughter called to the wolf, but it had become wild from the taste of blood, attacked her, and bit her on both arms and one leg. It held so fast that the young lady could not be released until she had nearly choked the wolf with its collar.

Also the following clipping from the same paper, January 13, 1908, shows the prevalence of wolves to-day in even quite populous districts: "Wolf-Plage. Aus dem nördlichen Wisconsin wird gemeldet, dass Wölfe in diesem Jahre zahlreicher sind denn je, und dass sie, durch Hunger getrieben, sich nahe an die Ortschaften wagen, und Hausthiere und auch Menschen angreifen. Zwei grosse Wölfe griffen in dieser Woche das Pferd der Frau Branchard an; das Pferd scheute und jagte in den Wald, wo es durch Arbeiter angehalten wurde, welche die Bestien verscheuchten."

⁹⁷ Note II.

⁹⁸ Note 20.

⁹⁹ Note 109.

¹⁰⁰ Note 24.

a long step in advance of our were-wolf believing peoples of an earlier period.

Up to this point the illustrations have shown that the were-wolf superstition went through various stages of development. The motives for assuming wolf's dress (or animal skins or robes), at first were purely peaceful, for protection against cold, and to secure food by acting as decoys; then it was used for personal advantage or gain by foragers (or robbers) and spies; then for purposes of vengeance;¹⁰¹ later from a desire for power over others; and finally men (the professional and the superstitious) began to concoct fabulous stories which were handed down as tradition or myth, according to the psychic level of the narrator and hearer.¹⁰²

¹⁰¹ Close of note 102.

¹⁰² John Fiske, *Myths and myth-makers*, p. 78, fol., gives the origin and development of the werewolf as follows: From the conception of wolf-like ghosts it was but a short step to the conception of corporeal werewolves. . . . Christianity did not fail to impart a new and fearful character to the belief in werewolves. Lycanthropy became regarded as a species of witchcraft, the werewolf as obtaining his powers from the Devil. It was often necessary to kill one's enemies, and at that time some even killed for love of it (like the Berserker); often a sort of homicidal madness, during which they would array themselves in the skins of wolves or bears and sally forth by *night* to crack the backbones, smash the skulls and sometimes to drink with fiendish glee the blood of unwary travelers or loiterers. . . . Possibly often the wolves were an invention of excited imagination. So people attributed a wolf's nature to the maniac or idiot with cannibal appetites, then the myth-forming process assigned to the unfortunate wretch a tangible lupine body. The causes were three: 1. Worship of dead ancestors with wolf totems originated the notion of transformation of men into divine or superhuman wolves. 2. The storm-wind was explained as the rushing of a troop of dead men's souls or as the howling of wolf-like monsters (called by Christianity demons). 3. Berserker madness and cannibalism, accompanied by lycanthropic hallucinations, interpreted as due to such demoniacal metamorphosis, gave rise to the were-wolf superstition of the Middle Ages. The theory that if one put on a wolf's skin he became a werewolf, is perhaps a reminiscence of the fact alleged of Berserkers haunting the woods by *night*, clothed in hides of wolves

The starting point of the whole superstition of the harmful werewolf is the disguising as some common animal by members of savage races when abroad as foragers or scouts, in order to escape detection by the enemy. Like wolves they roamed the land in search of food. As stated above,¹⁰³ later fabulous report would represent them as possessing in their disguise the attributes of the animal they impersonated,¹⁰⁴ and finally even of actually taking on animal form, either wholly or in part,¹⁰⁵ for longer or shorter periods of time. Some of the North American Indian transformation stories represent men as having only the head, hands and feet of a wolf.¹⁰⁶ The transformation into a werewolf in Germanic lands is caused merely by a shirt or girdle made of wolf-skin.¹⁰⁷ This shirt or girdle of wolf-skin of the Germanic

or bears. A permanent cure was effected by burning the werewolf's sack, unless the Devil furnished him with a new wolfskin. Primitively, to become incarnated into any creature, the soul had only to put on the outward integument of the creature. The original werewolf is the night-wind—a kind of leader of departed souls, howling in the wintry blasts. Encyc. Brit. under Lycanthropy:—The Berserkir of Iceland dressed in the skins of bears and wolves, and further on: "Beastform is in mythology proper far oftener assumed for malignant than for benignant ends."

¹⁰³ Ante p. 22.

¹⁰⁴ Note 57.

¹⁰⁵ Close note 65.

¹⁰⁶ Grinnell; and Ethn. Rep. 1888-89, p. 737.

¹⁰⁷ Grimm, Teutonic Mythology, III. 1094, fol. says: Our oldest native notions make the assumption of wolf-shape depend on arraying oneself in a wolf-belt or wolf-shirt, as transformation into a swan does on putting on the swan-shirt or swan-ring. Page 1095: "The transformation need not be for a magical purpose at all: any one that puts on, or is conjured into, a wolf-shirt, will undergo metamorphosis. . . . With the appearance, he acquires also the fierceness and howling of the wolf; roaming the *woods*, he rends to pieces everything that comes in his way." This is like the belief of the American Indian that the wearer of a mask becomes imbued with the spirit of the being which his mask represents (note 57); or that the shaman in full regalia becomes, or tries to make his followers believe that he has become, the power he represents (note 67).

werewolf is the survival of the robe or mantle originally disguising the entire body. It would be but a step further to represent a person as rendering himself invisible by putting on any other article of apparel, such as the Tarnkappe.¹⁰⁸ The stories especially in Europe were of the *were-wolf* rather than *were-bear* or other animal, because the wolf was the commonest of the larger wild animals.¹⁰⁹ It was the stories of the commonest animal, the wolf, which crystallized into the household werewolf or transformation tales.¹¹⁰

¹⁰⁸ Thus some American Indian stories represent men transformed into wolf, turkey or owl turning into stone or piece of decayed wood when pursued. And mantles of invisibility are mentioned in note 60.

¹⁰⁹ See Hirt, *Die Indogermanen*, I. 187: "Unter den grossen Raubtieren treten uns Bär und Wolf mit alten Namen entgegen. Der Wolf ist freilich überall in Europa verbreitet gewesen, der Bär ist aber ganz sicher ein Waldtier," etc. *Encyc. Brit.* under *Lycanthropy*: "In England by the 17th century the werewolf had long been extinct. Only small creatures, the cat, hare, weasel, etc., remained for the malignant sorcerer to transform himself into." See note 11.

¹¹⁰ Amongst the American Indians, where various larger animals were common, the designation "wolf-people" (see the sign-language of the plains) was bestowed especially on the Pawnees, because, as we have seen, they best imitated wolves. In Europe, where, of the larger animals, the wolf alone was universally common, the designation "wolf-people" (or if we choose, later, werewolves) was not restricted to any one locality or people, but was bestowed in general on those who assumed the manner of wolves, and because of their crimes became outcasts like the wolves. They best imitate wolves, and no doubt, to escape detection, disguised themselves as wolves (see note 102), and for this reason the *warg* or outlaw came to be called a *wolf* (see close of note 112). Thus Golther, *Mythologie*, p. 102, says: "Wird ein Werwolf verwundet oder getötet, so findet man einen wunden oder toten Menschen." The werewolves, as we have seen (ante p. 25), keep to the *woods* and the *dark*, of course in many cases to avoid detection. Similarly witches, *Ethn. Rep.* 1901-02, p. 393: "They say that witches love the *night* and lurk in *shadows and darkness*. Witches are believed to be able to assume the shape of beasts." Sigmund and Sinfjötli dwelt as wolves in the *woods*. Also the progenitor of the *Mýramenn* in Iceland at *night* could leave his house in wolf's form. Another Norwegian account reports how earlier many people were able to take on wolf's

form, then dwelt in *grove* and *woods*, where they tore people to pieces, etc. See Paul, *Grundriss*, III. 272 fol.; also note 113.

¹¹¹Names. See note 31. The development in the case of names was perhaps the same as in the case of masks (note 57), and of the werewolf superstition itself (ante p. 15, fol.); namely, a) protection against outside agencies was sought; b) growth of supernaturalism; c) element of humor.

a) See *Encyc. Brit.* under Lycanthropy: "Children are often named *wolf*, are disguised as a wolf to cheat their supernatural foes" (for similar assumption of characteristics or the nature of animals for personal advantage see note 33). See also Grimm, *Teutonic Mythology*, III. 1139: "The escort of *wolf* or *raven* augured victory;" and in the note: "A name of happiest augury for a hero must have been the O. H. G. *Wolf-hraban* (Wolfram), to whom the two animals jointly promised victory. Old names are no product of pure chance. Servian mothers name a son they have longed for, *Vuk, Wolf*: then the witches can't eat him up. O. H. G. *Wolfbizo* was a lucky name, i. e., one bitten by the wolf and thereby protected," like our modern curing of like by like in medicine.

b) With growth of supernaturalism came probably the development mentioned by Meringer, *Indog. Forsch.*, 1904, XVI. 165, about the conferring of secret names, since one could harm a person by his name alone, and could summon a foe merely by mentioning his name: "Wenn man den Wolf nennt, kommt er g'rennt." Again in XXI. 313 fol.: It was dangerous to name *bear* or *wolf* in regions infested by these animals, so people, out of fear, avoided calling the name of such animals; called the bear for example *honey-eater*, etc.

c) Finally, when man could better cope with animal foes, his fear of them disappeared, the elements of fearlessness and humor enter in, and such names arise as are mentioned in note 53; and such stories as that of Romulus and Remus, suckled by a wolf.

¹¹²Outlaws. The notion of werewolves (see Grimm, *Teutonic Mythology*, III. 1095) also gets mixed up with that of outlaws who have fled to the woods. A notable instance is that of Sigmund and Sinfjötli in the *Volsungasaga*. In regard to this W. Golther, *Handbuch der germanischen mythologie*, Leipzig 1895, p. 102, says: "Die Sage mag auf einem alten Misverständniss beruhen. *Warg, Wolf* hiess der Geächtete in der germanischen Rechtssprache. *Warg* wurde wörtlich als *Wolf* verstanden, und so bildete sich die Werwolfsgeschichte." Golther again, p. 424:—"Gefesselt wurde Loki als Ächter in den Wald getrieben, er wurde '*Warg*' d. h. *Wolf*. *Wölfe* heissen die friedlosen Waldgänger." As to *warg*, Schade in his *altdeutsches Wörterbuch* defines it as a räuberisch würgendes

wütendes Wesen, Mensch von roher verbrecherischer Denk- und Handlungsweise, geächteter Verbrecher, ausgestossener Missetäter; *warg* ist Benennung des Wolfes, in der Rechtssprache ein treu- und vertragbrüchiger Mensch, vogelfreier Mann, der den Frieden durch Mord gebrochen und landflüchtig geworden, oder nun im wilden Walde gleich dem Raubtiere haust und wie der Wolf ungestraft erlegt werden darf; im jetzigen Gebrauche auf Island Bezeichnung einer gewalttätigen Person. Similarly, J. Grimm, *Gesch. d. d. Spr.* p. 233. For customs amongst the American Indians relating to the outlaw see *Ethn. Rep.* 1879-80, p. 67 fol.: An outlaw is one who by his crimes has placed himself without the protection of his clan, is not defended in case he is injured by another. When the sentence of outlawry has been declared, for example among the Wyandots, it is the duty of the chief of the Wolf clan to make known the decision of the council . . . In outlawry of the highest degree it is the duty of any member of the tribe who may meet the offender to kill him like an animal. Page 60 fol.: "The chief of the Wolf gens is the herald and the sheriff of the tribe" (see also *Ethn. Rep.* 1893-94, p. cxiv). Criminals kept to the *woods* and the *dark*. Many of them lived like animals, dressed in animal skins, and to terrorize others assumed the role of werewolves. Since therefore so many outlaws lived, dressed (note 22 close) and acted like wolves, to all intents and purposes became wolves, *wolf* and outlaw became synonymous terms.

¹¹⁸ The widespread custom of keeping windows closed at night in Germany is perhaps a relic of heathen days, when people believed that werewolves, etc., entered houses at night. In place of the earlier harmful werewolf is now the "harmful" night air.

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INDEX

[The pages are in roman numerals, the notes in italic.]

- Abipones, 9, 66.
 Abyssinia, 9.
 Africa, 5, 23; 9, 47, 65.
 Alligator, 9.
 America, 5; 9, 85.
 American Indians, 5, 14, 21, 23, 27;
 9, 27, 66, 110.
 Anglo-Saxons, 9.
 Animals, 42.
 Animal fable, 15.
 Arabia, 9.
 Arawaks, 9.
 Arcadia, 9, 15.
 Asia, 5; 9, 12, 16.
 Assyrians, 15.
 Bear, 5; 9, 15, 16, 38, 102, 109, 111.
 Belgium, 12.
 Benignant, 4, 38.
 Berserkr, 1; 102.
 Bird, 5.
 Bison, 12, 27, 31, 32, 73, 74.
 Bohemia, 9.
 Borneo, 9.
 Bretons, 9.
 Bulgaria, 9.
 Burchard von Worms, 9.
 Burmah, 12.
 Celebrations, 21.
 Ceylon, 12.
 Charms, 10, 16.
 Clothing, 8, 9, 11, 16, 28.
 Coyote, 13.
 Dancing, 9, 10, 11, 12, 15, 16; 32,
 33, 34, 37, 42, 57.
 Dante, 24.
 Death, 22.
 Decoy, 8, 9, 10, 11, 13, 15, 16, 28;
 29, 30, 31.
 Denmark, 9.
 Dog, 5, 21, 27; 19, 64, 73, 74.
 Dreams, 21; 67.
 Edda, 15.
 Enemy, 8, 12, 14, 21, 26, 29; 48. 60,
 65, 102, 111.
 English, 9, 109.
 Eskimo, 30, 31, 67.
 Europe, 5, 7; 9, 12, 16, 110.
 Fenrisúlfr, 9, 51.
 Finns, 5.
 Fish, 5.
 Fisherman, 29.
 Food, 7, 8, 9, 11, 12, 15, 28, 29; 27,
 29.
 Forest, 25; 22, 65, 102, 107, 110, 112.
 Fox, 5, 12; 9, 15, 21.
 French, 9, 12.
 Germany, 2, 4, 5; 9, 22.
 Greece, 1, 7; 9, 15, 22.
 Greenland, 12, 69.
 Harmful, 1, 11, 13; 42, 51.
 Herds, 9, 12, 20.
 Herodotus, 1; 15.
 Hindoos, 9.
 Homer, 24.
 Hunter, 7, 8; 15, 31, 52, 53, 64, 95.
 Hyena, 5, 23; 9.
 Iceland, 9, 110.
 India, 5; 9, 12.
 Indogermanic, 7; 9, 20, 42.
 Insanity, 21, 22, 24; 24, 73, 85, 102.
 Iranians, 9.
 Ireland, 9.

- Italians, 9.
 Jackal, 12.
 Jaguar, 9.
 Japan, 9.
 Kadiak, 29.
 Kelts, 7; 9.
 Knut, 9.
 Lapps, 5.
 Leopard, 5; 9, 65.
 Leubuscher, 6; 9, 20.
 Lion, 5; 9, 45, 65.
 Lithuanians, 9.
 Loki, 14; 9, 112.
 Lycanthropy, 2; 9, 19, 20, 22, 74, 102.
 Lykaon, 9, 15.
 Magic, 23, 24; 22, 37, 60, 64, 65, 67, 69, 74, 81, 83, 84, 107.
 Malignant, 24; 4, 84, 102, 109, 113.
 Mask, 8, 11, 15; 29, 37, 42, 57, 64, 67, 107, 111.
 Mastodon, 20.
 Medicinemen (Shamans), 20; 52, 63, 66, 67, 74, 81, 83, 85, 90, 107.
 Mexico, 12, 67.
 Middle Ages, 22; 9, 74, 102.
 Murder, 24; 20, 22, 52, 102, 112.
 Myths, 7, 27; 24, 95, 102.
 Names, 42, 53, 109, 111.
 Netherlands, 9.
 Neurians, 1; 15.
 Night, 1, 12, 13, 23, 24, 25; 63, 65, 66, 69, 74, 84, 102, 110, 112, 113.
 North America, 12.
 Norway, 9.
 Odin, 15.
 Island Oesel, 9.
 Otter, 29.
 Outlaw, 24, 26; 84, 110, 112.
 Owl, 5, 30; 64.
 Pawnees, 12, 13, 23; 116.
 Persia, 9.
 Plants, 42, 95.
 Poles, 9, 14.
 Portuguese, 9.
 Posen, 14.
 Priests, 22, 67, 69, 83.
 Professionals, 22, 23, 24, 25; 74, 81, 83, 86.
 Provencal, 9.
 Prussia, 14.
 Reindeer, 5.
 Religion, 22, 24, 57.
 Revenge, 14, 17, 24, 28; 52, 69.
 Robber, 12, 13, 14, 21, 22, 24, 25, 26, 28; 15, 20, 44, 53, 65, 112.
 Romans, 7; 9, 27.
 Russia, 2; 9, 12, 16.
 Scandinavia, 9.
 Scout, 12, 13, 14, 16, 22, 23, 28, 29; 47, 48, 60.
 Scythians, 6.
 Seal, 29, 31, 69.
 Serpent, 5; 9.
 Servia, 9.
 Shepherds, 15, 20.
 Siam, 12, 69.
 Sinfjotli, 15, 64, 110.
 Song, 9, 10, 15; 33, 64.
 Skins (or dress) of animals, 6, 7, 9, 11, 12, 13, 14, 15, 16, 22, 23, 25, 28, 29, 30; 21, 22, 31, 34, 52, 53, 57, 60, 63, 64, 65, 66, 67, 74, 102, 107, 108, 110, 112.
 South America, 5; 12.
 Speech (animals), 7.
 Stories, 21, 22, 27, 28, 29; 9, 27, 60, 69, 102, 111.
 Supernaturalism, 10, 17, 18; 57, 65, 102, 111.
 Superstition, 1, 4, 5, 14, 23; 20, 64.
 Sweden, 9.
 Tiger, 5; 9, 45, 69, 90.
 Totemism, 2; 47, 102.
 Transformation, 5, 15, 21; 9, 11, 19, 22, 52, 64, 65, 66, 69, 107.

Traps, 8; 31.

Tschechs, 9.

Turkey, 5; 108.

Volhynia, 2; 9, 16.

Volsungasaga, 15, 112.

Wales, 9.

Warfare, 12, 13, 16; 60.

Weapons, 7, 8, 9.

Werewolf, 1, 2, 4, 6, 7, 21, 22, 28,
29, 30; 9, 15, 20, 22, 45, 64, 84,
86, 91, 102, 107, 109, 110, 112,
113.

Wiener Hundesege, 15.

Witches, 11, 19, 23; 65, 66, 67, 74,
83, 84, 91, 102, 109, 110, 111.

THE TRANSITIONAL PERIOD, 1788-1789, IN THE
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CONTENTS

I. INTRODUCTION	I
II. THE FIRST ELECTION OF UNITED STATES SENATORS .	10
III. THE FIRST ELECTION OF UNITED STATES REPRESENTA- TIVES	31
IV. PRESIDENTIAL ELECTORS	67
V. ADJUSTMENT OF VARIOUS FEDERAL AND STATE RELA- TIONS IN 1789	84
BIBLIOGRAPHY	107
INDEX	109

PREFACE

This study is a revision and enlargement of a monograph which was accepted by the Faculty of the Graduate School of the University of Pennsylvania in partial fulfillment of the requirements for the degree of Doctor of Philosophy. It was undertaken at the suggestion of Professor John Bach McMaster while the author was a Harrison Fellow in the University of Pennsylvania, and is an intensive study of the short period in United States history following the ratification of the Constitution of 1787 and previous to the organization of the federal government in the spring of 1789.

The author desires to acknowledge his indebtedness to the library staff of the University of Pennsylvania and also to that of the Historical Society of Pennsylvania for courteous assistance in gathering the material; and to his several colleagues and former teachers for frequent valuable suggestions and advice.

University of Missouri, July, 1909.

F. F. S.

CHAPTER I

INTRODUCTION

Transitional periods, if unaccompanied by violent commotions, receive scant attention while yet uncompleted, and are fully recognized only after a new epoch has been ushered in. Attention is always focused upon the present dimly related to the past or future and it is only when one stops to compare the present with a distinct time past—five, ten, twenty or a hundred years that the change of conditions is at once apparent. Especially is this true in any particular field if a distinct transitional period has occurred in the interim. Such a period, in the political and constitutional history of America, was the few months during which the government under the Articles of Confederation quietly gave way to the “more perfect union” under the Constitution.

The Articles of Confederation, rudely formed during a struggle for bare existence, by men patriotic but inexperienced in the government of a nation, were not adapted to the needs of the time, and proved inadequate for an era of peace. Even before final ratification by all the states an amendment to increase the authority of the central government by giving Congress the right to levy a five per cent duty on imports had been offered, only to be rejected, and later efforts to amend were equally in vain. Each of the thirteen states retained the sovereign rights of coining money, raising armies and taxing imports and exports. It was to remedy such defects as these that the Convention of 1787 put forth the new Constitution.

The threefold purpose of this monograph is to trace the relinquishment by the separate states of these powers into the hands of the federal government, to discuss the political and constitutional questions involved in consequence of this transfer of power,

and to show the awkwardness and lack of uniformity with which the states did their part toward putting the new government into operation.

A great weakness of the Articles of Confederation was the provision requiring unanimous consent of the states to changes in the Articles,¹ a provision which had defeated the impost, revenue and commerce amendments. The members of the Convention of 1787, therefore, fresh from these past defeats, provided in the seventh article of the Constitution that the ratification by the conventions of nine states should be sufficient for the establishment of the Constitution between the states so ratifying, a provision as necessary as it was revolutionary. But to preserve legal forms as far as possible, and to get the result of its work before the states, the Convention resolved on September 17 to submit the Constitution to Congress, to be transmitted by it to the various states in convention assembled. And in order to insure that the Constitution be put into actual operation when ratified by the requisite number of states, Congress was asked to fix a day upon which electors should be appointed, a day upon which they should assemble to cast their votes for a president, and the time and place for commencing proceedings under the new Constitution.

Congress, then sitting at New York, received the Constitution and accompanying resolves on September 28, 1787, and immediately transmitted them without comment² to the various state legislatures to be referred by these last to state conventions. The ensuing ten months proved a period of triumph for the

¹ Article XIII.

² "Congress having three states represented by those who were members of Convention, and three of the most influential, each in three other states, resolved to send it on without any recommendation, because its opponents insisted upon having their reasons on the journals, if they offered to recommend it". Arthur Lee to John Adams, October 3, 1787. Adams' Adams, IX. 555.

supporters of the proposed Constitution. Commencing with Delaware on December 6, 1787, one after another of the states took favorable action, until finally on June 21, 1788, the ratification by New Hampshire made the ninth state. It now became the duty of Congress to decide upon the details for putting the new government into operation.

New Hampshire's ratification was received at New York July 2. The question of putting the new government into operation was immediately referred to a committee composed of Carrington of Virginia, Edwards of Connecticut, Baldwin of Georgia, Otis of Massachusetts and Tucker of South Carolina. This committee reported July 14, proposing that the day for the appointment of presidential electors be the first Wednesday in the following December. A proposition was made to amend this, by which the two states with the furthest outlying counties, Virginia and North Carolina (providing the latter should have ratified), should appoint electors on the first Wednesday in December, the three large states of Massachusetts, Pennsylvania, New York (providing the last should have ratified) and the far-off state of Georgia on the third Wednesday, and the remaining states on the fourth Wednesday. This amendment, apparently looking to the people for the choice of electors, was easily negatived, only Connecticut and Georgia favoring it.

By July 28 the report of the committee had been debated and amended to read as follows: "That the first Wednesday in January next be the day for appointing electors in the several states, which have or shall before the said day have ratified the said Constitution; that the first Wednesday in February next be the day for the electors to assemble in their respective states, and vote for a president; and that the first Wednesday in March next be the time, and — — — the place, for commencing proceedings under the said Constitution."³

³ Journals of Congress, edited 1823, XIII. 57.

Although seven more weeks went by before Congress was able to decide upon the seat of the new government, no attempt seems to have been made to change the time as accepted in this amended report. The long delay was the result in part of the unusual requirements necessary to carry any proposition in Congress; and exhibits one of the weaknesses of the Articles; it was necessary that a majority of the thirteen states represented by two or more delegates vote in the affirmative, no matter how many states were absent at the time, or how many gave a divided vote. But there were still other reasons for the indecision. The partisans of New York city had been studiously promoting delay until news might come of the ratification by the state convention at Poughkeepsie, a necessity before New York's claims could be urged. Earnest supporters of the new Constitution, even if free from this sectional feeling, had another and stronger reason for delay; the existing state legislatures were probably everywhere less Federal than the new legislatures to be elected in the autumn. If Congress should at once send notice to the states of the necessary arrangements to be made for putting the new government into operation, it might afford a pretext to convene the existing legislatures in extra session, and thus result in measures unfriendly to the new government.⁴

The contest was one between New York and a more central point, preferably Philadelphia, though several other places were suggested from time to time. Upon the first vote Philadelphia was favored by six states and would have been chosen had not a delegate from Delaware, who really favored Philadelphia, divided the vote of his state in order to have a trial ballot taken upon Wilmington.⁵ Consideration of New York was next proposed but, on motion, postponed to try the strength of Lancaster and Baltimore. The former failed, but to the general surprise, the latter obtained the necessary seven votes.⁶ As few

⁴ Madison to Washington, July 21, 1788. Writings of Madison, V. 238.

⁵ Madison to Jefferson, August 10, 1788. Writings of Madison, V. 245.

⁶ Ibid.

seriously urged the eligibility of Baltimore, it was plain the question was not yet settled. The debate was resumed on August 5 and 6 and the supporters of New York urged their claims. They admitted that a central situation would be more proper but insisted that necessary accommodations should be furnished, and that such a place should be free from objections which might render it improper or unlikely to be a fit place for the capital, either permanently or until a fit place could be agreed upon. To insure such a location it was urged that permanent decision be left to the new Congress, as being a body less influenced by local attachments and less embarrassed by want of time and means. Furthermore, the removal of the public offices would be attended with much expense, danger and inconvenience, not counterbalanced by the advantages of any place at that time in a fit condition to receive them. And finally, since unnecessary changes of the seat of government would indicate instability and prove injurious to the interests as well as derogatory to the dignity of the United States, it was moved that New York be decided upon as the place for commencing proceedings.

In opposition to this, it was declared that the seat of government should, at the very outstart, be placed as near the center of the Union as possible. There were three reasons for this: first, that its influences and benefits might be felt equally throughout the whole country; second, that persons having business there might approach with equal convenience from the opposite extremes (a powerful argument in those days of wretched traveling accommodations); and third, that there might not be even the appearance of partiality. New York, whether population or distance was considered, was shown to be far removed from the center of the Union. Further, the new Senate was to have only eight members from east of New York, while sixteen were to come from the South; and of the new House of Representatives, seventeen were to come from the East and forty-two from the South. The distance between New York and the extreme

eastern state was hardly one-third of the distance to the extreme southern state. Finally, the appeal was made to the eastern states to commence the new government in the same spirit of mutual accommodation and mutual confidence which had hitherto marked the deliberations, and to reject a measure, which, from its seeming undue regard for local considerations, would naturally occasion jealousies and apprehensions. As a substitute for the previous motion, it was then moved that the seat of the new Congress ought to be in some place to the southward of New York. This motion was negatived seven to six, South Carolina and New Jersey voting with the northern states. Philadelphia, again proposed, was voted down, Georgia being divided. The question recurring on the original motion was carried seven to five, South Carolina and New Jersey voting with the northern states and Georgia still divided.⁷

Thus amended and accepted in piecemeal, the ordinance was finally voted upon a week later, August 13. In the meantime, however, the Rhode Island delegates, refusing to give a final vote for a system to which their state was opposed, had gone home.⁸ One of the two New Jersey delegates was also absent, so the ordinance failed of passage by two votes. Thus the whole question had to be taken up anew. To increase the difficulty, the North Carolina delegates had just heard the unfavorable news of the adjournment of their state convention without ratifying the Constitution, and so refused to have anything more to do with the subject. Neither the North nor the South could now muster seven votes, and it seemed as if the operation of the new government would be delayed, if not finally prevented, by inflexibility and jealousy.

During the next three weeks ballots were taken on New York, Wilmington, Lancaster and Annapolis, but the requisite seven votes not obtained for any one of them. By this time,

⁷ Journals of Congress, XIII. 67-70.

⁸ Writings of Madison, V. 246.

Alexander Hamilton had appealed successfully to Governor William Livingston of New Jersey⁹ to instruct the delegates from that state to vote for New York, declaring this would conduce to the permanent establishment of the Capital in New Jersey. The Virginia delegates becoming aware of this plan, were all the more indisposed to yield to New York, feeling that the Capital should be eventually on the Potomac.¹⁰ Futile efforts were made on the second and fourth of September to settle upon a time independent of a place. It was felt apparently that the states could proceed with their arrangements if that much of the question were decided. This plan failed for the want of one vote. At this juncture, to make the situation still more disagreeable, the Maryland delegates withdrew "in a temper."¹¹ The evident disposition of the northern states to risk or sacrifice everything in support of what the South felt to be an unjustifiable display of favoritism toward their locality, was extremely irritating to the southerners.

No more proceedings on the subject occurred until September 12. On that day it was again moved that the "present seat of Congress" be the place for commencing proceedings. The preamble recited in part, "longer delay in executing the previous arrangements necessary to put into operation the federal government, may produce national injury."¹² A substitute motion providing that a more central place be chosen, but leaving the place blank, was lost. At this point the Virginia and Pennsylvania

⁹ Works of Alexander Hamilton, Federal edition, IX. 442.

¹⁰ Madison to Washington, August 15, 1788. Writings of Madison, V. 248. Madison wrote a long letter to Washington on August 24, reviewing the whole situation and offering reasons in favor of Philadelphia which Washington characterized as conclusive. Writings of Madison, V. 256, and writings of Washington, Sparks' edition, IX. 433.

¹¹ Writings of Madison, V. 260. The Journals of Congress record the Maryland delegates as being present on Sept. 8 but not later.

¹² Journals of Congress, XIII. 102.

delegates, feeling that no alternative remained but to "agree to New York or to strangle the government in its birth"¹³ yielded. The two delegates from Delaware moved to strike out "and the present seat of Congress the place," and on the motion as to whether these words should stand, those two states and Georgia (which had usually been divided hitherto) supported the northern states. As the final question was about to be put, Delaware asked and obtained postponement until the following day. On that day, September 13, by the unanimous vote of nine states (Rhode Island, Delaware, Maryland and North Carolina not voting) the arrangements were finally completed. Electors were to be appointed on the first Wednesday in January, they were to cast their votes for president on the first Wednesday in February, and the new government was to commence operations in New York city on the first Wednesday in March, 1789.

This resolution, immediately announced to the states, was received with general approbation. It had been expected for weeks and the delay was beginning to cause considerable uneasiness among the friends of the new government. Washington wrote to Madison that the matter had already become the source of clamor and might give advantages to the Antifederalists.¹⁴ But previous to this, Madison had written to Pendleton that he had been ready for some time to conclude the contest, perceiving that further delay could only discredit Congress and injure the cause, but that his colleagues had not been able to overcome their repugnance to New York.¹⁵ The newspapers had been complaining for some time. The *New Jersey Journal* for September 10 declared that the pernicious effects of the delay would be

¹³ Writings of Madison, V. 261.

¹⁴ Washington to Madison, September 23, 1788. Sparks' Washington, IX. 433.

¹⁵ Madison to Pendleton, September 14, 1788. Writings of Madison, V. 260.

strongly felt in all parts of the Union. The Connecticut Courant for August 25, complaining that sufficient time for framing the necessary act had more than elapsed, said, "The delay does not give satisfaction to the *Masters of Congress, The People*, who scruple not to attribute it to motives, which it is to be hoped do not exist."

Upon the final passage of the act, complaints ceased and attention was turned from Congress to the state legislatures. All classes began to speculate on such new questions as the time of election, the mode of election and the candidates for office.

CHAPTER II

THE FIRST ELECTION OF UNITED STATES SENATORS

Of the three elections necessary in order to put the machinery of the new government into operation, namely those for electors, representatives and senators, that of the last attracted the least attention. This was undoubtedly because the people had no direct part in the choice. Within the respective state assemblies, the action taken was usually a perfunctory registration of votes for men more or less important in the local political life.

The action of the legislatures differed in one interesting but hardly important particular—the preparatory proceedings for the senatorial election. Some states passed specific acts, similar in all respects to legislative acts requiring the approval of the executive, providing for the day, manner and place of the election. Other states settled these matters by a simple, brief joint or concurrent resolution.

Beside the passing interest in the result of the vote, a question of permanent importance had to be decided. This was whether the election should be by vote of the two houses of assembly in joint session or in separate sessions. In many of the states the former method had been used in the election of state executive officials, militia officers or members of the judiciary, and that custom was now quoted as a precedent for the manner of the election of senators. As a result the majority of the legislatures elected by joint ballot. In those few states in which a contest ensued, it usually terminated in favor of the contention of the upper house for an election by concurrent vote.

The first state to take action upon this election as well as upon those for representatives and for electors, was Pennsylvania. No complications between an upper and lower house arose, for at that time the state constitution of 1776, with its pro-

vision for an assembly of a single house, was still in force. The committee on the Federal government, appointed September 18, 1788, reported a bill five days later for the election of representatives and electors, and with the bill a resolution providing that the following Tuesday, September 30, be assigned for the election of two United States senators. Although some objection to such prompt action was made, the resolution was accepted, it being argued that this was a part of the great system for which the assembly was making provision, and action could not prudently be deferred.¹ Previous to the election three men were placed in nomination, Robert Morris, General Irvine and William Maclay. On the appointed day sixty-seven assemblymen were present, and each voted for two persons. The first and only ballot resulted in sixty-six votes for Maclay, thirty-seven for Morris and thirty-one for Irvine. Maclay and Morris were therefore declared elected.²

The new state constitution providing for a bicameral legislature went into effect in the autumn of 1790, and in the selection of a successor to William Maclay, whose term of office expired March 4, 1791, a famous quarrel between the houses ensued. The question seems not to have arisen until February 28, 1791, when a resolution was introduced in the state senate, "That both houses of the General Assembly meet in the Senate chamber on Thursday the third of March next, for the purpose of electing, by joint vote, a Senator to represent this state in the Senate of the United States, and that the mode of conducting the present election shall not be drawn into a precedent or example to govern any future election."³ This was negatived. On March 19, another resolution "that if the House of Representatives agree

¹ Lloyd's Debates, IV. 216.

² Minutes of the Assembly of Pennsylvania.

³ This and the following actions are taken from the Journals of the Senate and of the House of Representatives of Pennsylvania.

thereto. . . . be and he is hereby chosen by the legislature of this commonwealth one of the Senators to represent this commonwealth in the Senate of the United States," was introduced but not carried. Finally on March 22, the state senate passed the following resolve: "That on the 31st of March, the Senate and House of Representatives. . . . will proceed to the election of a Senator, in the Congress of the United States, to supply the vacancy in that body, made by the expiration of the period for which William Maclay, one of the Senators, was elected, and that the manner of choosing such Senator shall and is hereby prescribed to be, that each House shall choose the Senator by a *viva voce* vote in each House, and that should the Senate and House of Representatives disagree, each House may report its choice of a Senator until they agree in the choice of one and the same person, and that the name of the person chosen shall be inserted in a resolution to be agreed to by each House." On March 26, this resolution was read in the house, and then ignored till April 11 (long after the date prescribed by the resolution for the election), when it was rejected. On motion of Gallatin the house then resolved, "That on the twelfth inst., at twelve o'clock, the Senate and House of Representatives will meet in the Senate chamber, and then and there proceed (by joint vote of the members of both Houses then present) to the election of a Senator in the Congress of the United States." This was immediately sent to the senate, but received no attention, and the assembly adjourned two days later until August.

When the assembly met in August, 1791, a conference committee was immediately appointed by both houses in order if possible to come to some compromise. On September 9 the house committee reported that the joint committee had held several conferences, the result of which was that the senate committee contended for a concurrent vote, while it believed that the spirit of the Constitution, the expediency of the case and the example of a great majority of the states, all united in support of a

joint vote. On the same day the senate committee reported the disagreement, whereupon it was resolved by a vote of nine to eight that on the next Tuesday, September 13, the senate would proceed to the choice of a senator. The day following, the house approved the conduct of its committee and passed as a resolution, "the members of this house in conjunction with the members of the Senate, will proceed to the election of a Senator. . . . on Wednesday next." On the thirteenth, the senate rejected this resolution of the house, but when its own order of the day was called up, action was postponed. A few days later the house attempted to break the deadlock by passing a regular bill prescribing the manner of election. The senate amended the bill by providing for the election by concurrent vote, an amendment which the house refused to accept, and before any further action could be taken the assembly adjourned.

Soon after adjournment, there appeared an article in the public press giving the reasons why a minority in the house favored the senate amendment. It was argued that since United States senators were to be chosen by the legislature, and since the legislature of Pennsylvania consisted of two houses, the choice should be effected in the same manner that every other legislative act was done. A choice by joint vote would be a choice by *two houses* acting together, not a choice by the *legislature*. It was further declared that the action by the lower branch of the legislature signified "an attachment to their own house, a desire to extend its influence, and an inclination to wrest the powers of the senate out of their hands."⁴ A defense of the house majority for rejecting the senate amendment also appeared. While it was virtually admitted that either method was constitutional, since senators elected by both methods had been admitted to Congress, yet in view of the fact that a deadlock might occur if the election were by concurrent vote the expediency of

⁴Dunlap's Daily Advertiser, October 3, 1791.

the joint session method was urged. It was also claimed that the spirit of the Constitution favored a system in which every member of the legislature had an equal voice, not a system in which a member of the senate had four times the vote of a representative, as was the case in election by concurrent vote.⁵

It was thought that Governor Mifflin might now appoint a senator to fill the vacancy, until the two houses could come to an agreement.⁶ This he did not do, however, not feeling sure of his authority. But when the new assembly met in December, 1791, he attempted to stir it to action by declaring in his message that the thing of prime importance, demanding first attention, was the choice of a senator.⁷ Notwithstanding this official prod, the session was but a repetition of previous ones—rejected bills and resolutions, barren conferences and addresses to the people.

The next assembly met December 4, 1792. The senatorial question came up at once, and after several considerations of the subject, a bill was introduced in the house, December 17, again advocating the joint session method. The bill passed the house on the twenty-eighth and was immediately sent to the senate where it suffered an even harder fate than its predecessors, being flatly rejected without consideration. The senate, apparently, had lost all patience, and on January 15, 1793, it proceeded to elect a senator according to its own method. Eighteen members were present, but eight declined to vote, entering their reasons in full on the Journals.⁸ The other ten members gave a unanimous vote to James Ross. When this action was conveyed to the house, that body declared by a vote of forty-four to eleven that

⁵ Dunlap's Daily Advertiser, October 4, 1791.

⁶ The Mail, October 4, 1791.

⁷ Pennsylvania Archives, Series 4, IV. 201.

⁸ Journals of the senate of Pennsylvania, III. 70. The senate, throughout the two years of this contest, had been very closely divided, a bare majority holding out against the lower house. The latter on the other hand, had a large majority, at times four-fifths, against the senate majority.

on constitutional grounds it could take no order on the senate election.

No other action was taken till February 19, 1793, when the eight supporters of the house measures and only seven of their ten opponents were present in the senate at the same time. A resolution was then passed providing for the election of a United States senator by joint ballot, nominations to be previously made. This resolution was immediately sent to the house where it was adopted without delay. Thus through strategy the joint session faction finally attained its end. Previous to the date of election, February 28, sixteen persons were placed in nomination, among them being James Ross, Colonel Henry Miller, Albert Gallatin and former Senator William Maclay. On the day of election the house supporters united on Albert Gallatin and the senate on Henry Miller. Of eighty-two votes cast, Gallatin received forty-five and was declared elected.

When, because he had not been seven years a citizen, the election of Gallatin was declared void by the United States Senate,⁹ the Pennsylvania lower house passed a resolution to elect a senator by joint vote. The senate showed signs of balking again, but when it came to a decision, negatived a resolution for a concurrent vote and reluctantly adopted the house resolve. Fourteen persons were placed in nomination, but only three were voted for at the election. James Ross, the successful candidate, received forty-five votes, Robert Coleman, thirty-five, and Samuel Sitgreaves one. Thus, finally, on April 1, 1794, an acceptable senator was chosen for the term commencing March 4, 1791.

Like many of the other apparently constitutional questions of the time, this contest was at heart a political one. The majority in the senate was Federal, in the house, Republican. If the election were by concurrent vote, the senate could hold out against, and possibly in time secure a victory over the house, but

⁹ February 28, 1794. See *Annals of Congress*, 1793-95, 47-62.

if the election were by joint vote, the large house majority would swamp the senate on the first ballot. This was the real significance of the deadlock lasting until 1793. In 1794 the two houses were of the same political faith, and it made little difference which mode of election was used. This explains the yielding of the senate to the house in the latter year.

The Connecticut and Delaware legislatures, following Pennsylvania in point of time, held their senatorial elections in joint session, apparently without question or unusual incident. This was the customary method for the election of several of their state officers. The successful candidates in Connecticut were William S. Johnson and Oliver Ellsworth. In Delaware the council and assembly met together on October 25, at twelve o'clock, and placed George Reed, Gunning Bedford and Richard Basset in nomination. At three o'clock of the same day, another joint session was held and Reed and Basset were elected.¹⁰

In Virginia the choice of senators was interesting, not because of any unusual method employed in the election, nor of any contest between the two houses, but because the anti-constitutional party in that state was making a last desperate attempt to thwart the operation of the new Constitution by forcing Congress to call a second general convention. It was necessary to the success of this movement that friends of the Constitution must not be sent to Congress, hence the struggle was carried into the senatorial election.

On the first of November, 1788, Patrick Henry moved that on November 8 the two houses proceed by joint ballot to the choice of two senators to represent Virginia in the United States Senate.¹¹ Both houses agreed and on the sixth of November candidates were nominated. The only person brought forward by the Federalists was James Madison. Three weeks earlier, in writ-

¹⁰ Minutes of the Council of Delaware.

¹¹ Rives' Madison, II. 648.

ing to Governor Randolph on the subject, Madison had said, "I mean not to decline an agency in launching the new government if such should be assigned me in one of the Houses, and I prefer the House of Representatives, chiefly because if I can render any service there, it can only be to the public, and not even in imputation, to myself. At the same time, my preference, I own, is somewhat founded on the supposition that the arrangements for the popular elections may secure me against any competition which would require on my part any step that would speak a solicitude which I do not feel, or have the appearance of a spirit of electioneering which I despise."¹² But when his friends expressed a strong preference for him over any other Federal candidate for the senatorship, he waived all objections, though at the same time, from the political complexion of the assembly, he did not expect to be elected.

For the Antifederal party, two candidates, Richard Henry Lee and William Grayson, were nominated, Henry taking the unusual liberty of naming both. A letter from Governor Randolph to Madison, describing the proceedings on the day of nomination, says, "Mr. Henry, after expatiating largely in favor of Mr. Lee and Mr. Grayson, concluded that yourself, whose talents and integrity he admitted, were unreasonable on this occasion, in which your Federal politics were so adverse to the opinions of many members. Your friends Page, Corbin, Carrington and White were zealous, but the last gentleman, having in the connection of his idea something about instructions, acknowledged that it was doubtful whether you would obey instructions which should direct you to vote against direct taxation. 'Thus gentlemen,' rejoined Mr. Henry, 'the secret is out; it is doubted whether Mr. Madison will obey his instructions.'" ¹³

¹² Madison, to Edmund Randolph, October 17, 1778. Madison's Writings, V. 276. See also V. 296.

¹³ Conway's Randolph, pp. 120-121.

Henry urged in particular that Madison was against amendments, a telling argument in an assembly committed, as it already was, to the principle of amendments at any cost. This public philippic against Madison had its desired effect. At the election on the eighth, Lee received ninety-eight votes, Grayson eighty-six, Madison seventy-seven and sixty-seven votes were given to persons not nominated.¹⁴ Thus Virginia elected two declared Antifederalists to the Senate.

The first choice of senators in New Hampshire was by concurrent vote. This was the more strange because the two houses were accustomed to meet in joint session for debate on important matters—as they did, for instance, to consider the best method of carrying into effect the resolves of Congress relative to the new Constitution.¹⁵ But the journals of neither house nor of any other extant records contain an account of any question arising as to whether or not this was the proper mode of electing senators. On November 11, the lower house, by a vote of sixty to three proposed John Langdon as one of the senators.¹⁶ The day following, the senate concurred in the choice of Langdon, and chose Josiah Bartlett as his colleague. At the same time the house selected Nathaniel Peabody, and then waited to see what the senate would do with this choice before acting on that body's recommendation. The senate, however, by a vote of two to eight non-concurred in the election of Peabody, and the house then concurred in the choice of Bartlett. Bartlett declined to serve, and on January 1 the house selected Paine Wingate in his place, a decision to which the senate agreed.

The Massachusetts general court, in contrast to the New

¹⁴Ibid. Each person of the 164 who voted named two candidates. Randolph says that at least fifty of the sixty-seven votes given to men not nominated, came from Madison's friends, who thus threw away their second vote rather than assist Lee or Grayson.

¹⁵State Papers of New Hampshire, XXI. 349.

¹⁶Ibid., XXI. 356, 357.

Hampshire assembly, had considerable trouble in deciding upon an election method. The joint committee on the new government made a detailed report November 4, in which it was recommended that in the choice of senators, each branch of the legislature have a negative upon the other.¹⁷ The house did not readily accede to this, and the committee was called upon to defend its action. To quote the *Massachusetts Centinel*, "Mr. Dawes explained the reasons which induced a majority of the reporting committee to agree to it—he said the Federal Constitution had directed that the choice should be by the Legislatures of the several States. In order to ascertain what was meant by the term Legislature, a recurrence was had to the constitution of this State, and it had there been found that the Legislature consisted of the two branches of the General Court, acting on each other by a *negative*. The Committee therefore could do no other than report as they had."¹⁸ As the house considered that mode of election prejudicial to its privileges, the acceptance of the report was negated by a great majority. A deadlock, lasting for two weeks, ensued, but finally on November 20, a compromise between the two houses was effected. It was agreed that the choice of presidential electors should be by joint ballot, and the choice of senators by concurrent vote. On the following day the house proceeded with the election of two persons, Caleb Strong and Charles Jarvis. The senate at once concurred in the election of Strong, but non-concurred in that of Jarvis, proposing John Lowell instead. The house would not agree to Lowell's election and chose Jarvis a second time. The senate, in turn, sent down its second non-concurrence, this time proposing the name of Azor Orne. The house refused to accept Orne and persisted in naming Jarvis, but for the third time the senate non-concurred and brought forward Tristram Dalton. Both houses seemed de-

¹⁷ *Massachusetts Centinel*, November 5, 1788.

¹⁸ *Ibid.*, November 8, 1788.

terminated and an indefinite contest was foreshadowed, but just at this juncture Jarvis withdrew. The house then chose Nathan Dane but the senate insisted upon Dalton, and on November 24, the house concurred in the latter's election.¹⁹

In New Jersey the "joint meeting" had a regular organization. Annually, at the beginning of each new legislature, the two houses came together and elected officers of the joint meeting to serve one year. Many important questions and all elections of state officers came before this body. This explains the tenth section of the act for carrying the new Constitution into effect in New Jersey, passed November 21, 1788.²⁰ By this section it was provided that two citizens of the state, qualified as the constitution directed, should be chosen by the state legislature assembled in joint meeting. The governor of the state was authorized to commission the persons so chosen, under the great seal of the state. On the day following the passage of the bill, the council proposed to the house a joint meeting on the following Tuesday, November 25, at the college library room,²¹ for the purpose of electing senators and other officers.²² The house promptly acquiesced, and at the prescribed time and place, twelve councillors and thirty-eight assemblymen were present. Each had the privilege of voting for two persons. Four candidates were placed in nomination: William Paterson, Abraham Clark, Jonathan Elmer and Elias Boudinot. Of the one hundred votes cast, Paterson received forty-five, Elmer twenty-nine, Clark nineteen and Boudinot seven. Paterson and Elmer were declared elected.²³ It is worthy of remark that in this case, judging by the returns, a concurrent vote would not have changed the result. Of the twenty-four votes cast by the councillors, Paterson received

¹⁹ Massachusetts Centinel, November 22, 1788, et seq.

²⁰ New Jersey Session Laws.

²¹ The assembly was meeting at Princeton.

²² Journal of the Proceedings of the Legislative-Council.

²³ New Jersey Journal and Political Intelligencer, December 3, 1788.

twelve, Elmer had seven, Clark three, and Boudinot two; while of the seventy-six votes by the assemblymen, Paterson received thirty-three, Elmer twenty-two, Clark sixteen, and Boudinot five. All four candidates were professed Federalists, though it was thought Clark favored amendments.

The Maryland legislature passed no law on the subject of the election, but it was agreed by a concurrent resolution that the election should be by joint ballot, that no person should be chosen except by a majority of the attending members of both houses, that one senator should be a resident of the western shore and one of the eastern shore, and that the election should take place December 9.²⁴ On that day thirteen of the fifteen members of the senate, and seventy of the seventy-six members of the house of delegates attended the joint session. John Henry and George Gale were put into nomination for the eastern shore, and Charles Carroll and Uriah Forrest for the western shore. On the first ballot Henry, Gale and Forrest each received forty-one votes, and Carroll forty. Since eighty-three members were present no candidate had received the necessary majority of forty-two, and a second ballot was taken. It resulted as follows: Henry forty-two, Gale forty, Forrest forty-one and Carroll forty-one. Henry was therefore declared elected as the senator from the eastern shore, and adjournment was taken until the following day. The first ballot cast when the joint session reassembled resulted in the election of Carroll, forty-two votes being given to him and thirty-nine to Forrest.²⁵ Had the Maryland election been by concurrent vote, either a deadlock would have resulted or it would have been necessary to effect a compromise between the two houses, for, on the first ballot, forty of the seventy members present from the lower house voted for Henry and Forrest, while twelve of the thirteen senators present

²⁴ Session Laws of Maryland, 1788.

²⁵ Independent Gazetteer, December 18, 1788.

avored Carroll and Gale.²⁶ Possibly, even as it was, the result was a compromise, for Henry, supported by the house majority, was chosen over Gale, while Carroll, supported by the senate majority, was chosen over Forrest.

The South Carolina and Georgia legislatures chose their senators early in the year 1789. Little more than the names of the successful candidates, and the fact that they favored the Constitution is known. The Georgia legislature, similar to the Pennsylvania assembly, was composed of but one house at that time, and being free from inter-house struggles, had no difficulty in making James Gunn and William Few its choice. The election in South Carolina was probably in joint session, the mode followed in the choice of presidential electors. Pierce Butler and Ralph Izard were returned.

The absence of any constitutional provision or congressional law specifically describing the manner of the choice of senators was felt most keenly during the first election in New York, where a deadlock in the legislature deprived that state of representation in the United States Senate for the greater part of the first session of Congress. The upper house of the assembly contained a very small Federal majority while the lower house was Antifederal in the proportion of about seven to five. This gives the key to the situation at once, though upon its face the contest was altogether a constitutional one.

The assembly met December 10, 1788. Ten days later the senate passed a bill providing for the election of Philip Schuyler

²⁶ Nothing has been found to indicate that this contest was anything more than the result of personal rivalry. Carroll and Gale were unquestionably Federalists, but there is no apparent evidence that Henry and Forrest were Antifederalists. The house of delegates was certainly Federalist, as is proved by the law it passed for the election of representatives, and hence would not have supported Antifederalists. Possibly Henry and Forrest belonged to the middle party favorable to constitutional amendments by Congress.

and Robert Yates, but when it came before the house it was rejected without debate. The house, meanwhile, had framed a general election bill for senators, representatives and presidential electors, which it passed December 22. In the election of senators, this bill provided that the senate and assembly should each openly nominate as many persons as there were senators to be chosen, after which nomination both houses should come together and compare the lists. Those persons named in both were to be declared elected, and in case only one man was so chosen, from the remaining persons whose names were on one list only the other senator was to be chosen by joint ballot.²⁷

The senate passed the bill, but with amendments wholly changing its character. For electing senators, the upper house substituted the following: "The senate and assembly of this state shall, if two senators are to be appointed, openly nominate two persons, and shall respectively give notice each to the other of such nomination; that if both houses agree in the nomination of the same person or persons, the person or persons so nominated and agreed to shall be the Senator or Senators to represent this state in the Senate of the Congress of the United States; that if the nomination of either house does not agree in any of the persons nominated by the other the Senate shall on the same day openly choose one of the persons nominated by the assembly, and the assembly shall on the same day openly choose one of the persons nominated by the Senate, and the two persons so chosen shall be the Senators to represent this state as aforesaid; that in every case where two Senators are to be chosen, and both houses agree only as to one in such nomination as aforesaid, and in every case where only one Senator is to be chosen, either of the two houses of the legislature may propose to the other a resolution for concurrence, naming therein a person to fill the office of Senator, and if the house receiving such resolution shall concur there-

²⁷ Pennsylvania Packet, January 18, 1789.

in, the person so named in such resolution shall be the Senator, but if such resolution shall not be concurred in, either house may on that or any future day, proceed to offer to the other a resolution for concurrence from time to time until they shall agree upon a Senator."²⁸

The amended bill received an adverse vote in the house, but according to Article XV, of the state constitution, before it could be finally rejected, a joint session or conference had to be arranged and "managers" appointed by each house to present its point of view. This conference was arranged for January 5. Duane, L'Hommedieu and Schuyler were appointed to speak for the senate; Jones, Adgate and G. Livingston were to perform a like office for the house. A great debate, lasting almost the entire day, ensued. It was urged in behalf of the original bill that it followed the plan directed by the state constitution and was therefore the only constitutional method. To this it was replied that the new Federal Constitution had made certain parts of the state constitution null and void. The latter had indeed provided for the election of members of the Continental Congress by joint vote, but under the new regime the only authority for the appointment of senators was derived from the Federal Constitution. The house managers demurred, saying that the new Constitution did not expressly do away with or contradict the election provision of the state constitution; the latter was still in force and should be employed. In that case, answered the senate managers, since it was clear that United States representatives were as much "members of Congress" as were senators, they ought also to be elected by joint ballot of the two houses,—a deduction plainly following the house arguments, though as plainly unconstitutional. But, it was rejoined, the senate amendment was not conformable to either of the constitutions, since the language of both was that of *choosing* or *electing*, whereas the idea in the amendment barely amount-

* Pennsylvania Packet, January 18, 1789.

ed to an *appointment*. A joint vote is an *election* by the legislature, they argued further, while a concurrent vote is simply an *appointment* by an *act* of the legislature. An appointment by an act was precisely the proper method, replied the senate speakers. The new Constitution prescribed, "the times, places and manner of holding elections for *senators* and representatives shall be prescribed in each state by the *legislature* thereof." That is, the legislature, in New York the senate and house, must act as it usually acts, since no other mode is dictated,—and the two houses in New York "act by and have a negative upon each other." The house ignored this and advanced a new argument. The assembly was nearer the people, and in a case of this kind ought to have more power in the choice; this was the principle upon which the state constitution had been formed. The senate managers denied this and affirmed that the state constitution had established an equality between the two branches of the legislature, which the house plan would destroy. As a last resort the house managers urged the acceptance of their plan on the grounds of expediency: the senate plan was not conclusive, and if the two houses could not agree, no appointment would follow. In answer it was stated that the senate amendment copied the plan used satisfactorily in the passage of laws.²⁹

At the conclusion of the conference the assembly rejected the amendment by a vote of thirty-five to twenty-four: the senate refused to recede by a vote of eleven to eight, and the bill was lost. About two weeks later the house passed another bill providing for the choice of senators, but it contained provisions exactly similar to those of the bill which had failed. The senate passed the bill with the same amendment as before. A conference was again held but neither side would compromise, and the bill was lost. Spasmodic efforts to come to an understanding were continued, but all were fruitless, and the legislature finally adjourned March 3, with no senators appointed.

²⁹ Pennsylvania Packet, January-February, 1789.

The contest was now transferred from the legislature to the voters of the state. The election of state officers was to be held April 28, and both parties made strong efforts to win.³⁰ The gubernatorial contest attracted the greatest attention, but the struggle to control the legislature was a close second in interest. The final returns showed that the honors were divided. The Antifederalists were successful in the choice of a governor, Clinton winning by about four hundred votes, but the Federalists had a majority in the legislature. On June 4 Governor Clinton issued a proclamation convening the legislature in special session at Albany July 6.³¹ Although no definite reason was given, it was surmised by the press of the country that the special business was the election of senators.³²

On July 8, two days after the legislature had met, a bill directing the manner of appointment of United States senators was presented to the house. In brief, it provided for an election by concurrent vote, thus justifying the position which the senate had held at the previous session. Each house was to nominate the number of persons to be elected. If the nominations agreed, those nominated were to be declared elected. Otherwise, if two persons were to be chosen, the house was to choose one from the two senate nominations and the senate one from the house list. If only one senator was needed, or if two were to be chosen and only one had been agreed upon in the first nominations, the election was to be by concurrent vote.³³

This bill passed the house July 10, and the senate July 13. Just at this point the Council of Revision came forward in support of the Antifederalist position. This Council was composed of the governor, chancellor and judges of the supreme court, and

³⁰ Pennsylvania Packet, May 8, 1789. The state was "convulsed by parties."

³¹ Independent Gazetteer, June 10, 1789.

³² Independent Gazetteer, June 30, 1789.

³³ Ibid., July 22, 1789.

had authority to return to the legislature, together with their written objections, all bills which they considered improper to become laws. Then, unless passed by a two-thirds vote of both houses in separate session, such bills failed.³⁴ On July 15, the Council of Revision returned the bill prescribing the manner of electing senators, with the following objections:

"1. Because the Constitution of the United States directs that the Senators be chosen from each State by the Legislature thereof. If by the Legislature is intended the members of the two houses not acting in their legislative capacity, no law is necessary to prescribe the mode of election; concurrent resolutions extending in this case as well to the mode of election as to the choice of persons, and the bill, as far as it goes, operates as a restriction upon the constitutional rights of the two houses. If the Legislature are only known in their legislative capacity, the Senators can constitutionally be appointed by law only, (that is, each house having a negative upon the other) and no considerations arising from inconvenience will justify a deviation from the Constitution of the United States.

"2. Because this bill, when two Senators are to be chosen, enacts that in case of the disagreement of the two houses in the nominations, each house shall, out of the nominations of the other, choose one, and that such person shall be the Senator to represent this State; and thus, by compelling each house to choose one of two persons, neither of whom may meet with their approbation, establishes a choice of Senators by the separate act of each branch of the Legislature, in direct opposition to the Constitution of the United States, which in the third section of the first article, declares that they shall be chosen by the Legislature."³⁵

The house refused to pass the bill in the face of these ob-

³⁴ New York Constitution of 1777, Article III.

³⁵ Street's Council of Revision of the State of New York, p. 290. Albany, 1855.

jections, and immediately afterward adopted a resolution providing for the choice of senators by concurrent vote. This mode being acceptable to the senate, the house proceeded to nominate Philip Schuyler and James Duane. The senate by a vote of thirteen to six concurred in the choice of the former but rejected the latter, proposing instead Ezra L'Hommedieu. On the following day the house non-concurred in the choice of L'Hommedieu, and by a unanimous vote nominated Rufus King. The senate immediately concurred, thus finally completing the election.³⁶

North Carolina and Rhode Island, represented in the United States Senate in the second and third sessions of the first Congress, both chose senators by ballot in joint session, the custom followed in the selection of state officers. This system was modified in North Carolina by a peculiar arrangement in which each house in separate session, at the close of the joint session, concurred or non-concurred in the action of the joint session.³⁷ This arrangement, however, apparently did not affect the choice of senators.

The North Carolina convention ratified the Federal Constitution November 21, 1789. Three days later the house proposed to the senate that on the following Thursday, November 26, the two houses should proceed to the choice of United States senators, accompanying the proposition with the names of twelve persons as candidates. The senate agreed to both the resolution and the nominations. On the first ballot in joint session, the legislature elected Samuel Johnston by a large majority,³⁸ but failed to concentrate on a second choice. Another ballot was accordingly arranged for December 2, with three persons in nomination. But three successive sessions, on as many different days, had to be

³⁶ *Independent Gazetteer*, July 24, 1789.

³⁷ When the joint session chose Alexander Martin as governor to succeed Johnston, the senate withheld its concurrence because it had been suggested that Martin was not eligible. *State Records*, XXI. 661.

³⁸ *Ibid.*, XXI. 628.

held before Benjamin Hawkins was finally chosen on December 8.³⁹

The Rhode Island assembly was convened in special session immediately after the ratification of the Constitution, and an act was soon passed making provision for the election of two senators and one representative. The former were to be chosen "agreeably to the usage in the choice of state officers by this General Assembly, joined in a grand committee, and not in separate houses, and by ballot, and not otherwise."⁴⁰ The successful candidates were Joseph Stanton, first, and Theodore Foster, second.⁴¹ In order to enable them to take their seats in Congress, it was voted to loan to each one hundred fifty dollars, to be repaid with interest upon their return.⁴² Both took their seats in Congress June 25, 1790. This made the representation of the thirteen states in the upper house of that body finally complete.

A summary of the results of this first election of United States senators reveals the fact that despite the wide-spread dif-

³⁹ Hawkins took his seat in Congress on January 13, and Johnston on January 29, 1790.

⁴⁰ Rhode Island Colonial Records, X. 385.

⁴¹ Rhode Island Colonial Records, X. 387. Stanton was an Antifederalist and had voted against the adoption of the Constitution. W. R. Staples, *Rhode Island in the Continental Congress*, p. 673.

Foster was a Federalist from Providence and had worked hard for the adoption of the Constitution. *Collections of the Rhode Island Historical Society*, VII. 121-122.

No information as to who were the opposing candidates, nor as to the number of votes received, is extant. It would seem probable that at the election each member of the assembly voted for one person, the two receiving the highest number being elected. In that case the assembly, which had an Antifederalist majority, would naturally give the highest number of votes to an Antifederalist, who would then be "first senator," while the minority would unite to give the second highest number of votes to a candidate of its party. This man would then be "second senator."

⁴² Rhode Island Colonial Records, X. 386.

ference of opinion as to the proper procedure in such elections, a large majority of the legislatures decided in favor of the joint session method. In two states, Pennsylvania and Georgia, the assemblies at that time were composed of a single chamber, and hence the election was a very simple matter. Of the remaining eleven states, only three, New Hampshire, Massachusetts and New York, chose their senators by concurrent action of the two houses.

CHAPTER III

THE FIRST ELECTION OF UNITED STATES REPRESENTATIVES

During the same few months that the states were deciding for the first time, just how the appointment of senators should be made, they were also making their first provisions for the election of United States representatives. None of the states had taken any action previous to the autumn of 1788, but the subject had been discussed in the newspapers of the country during the summer, and the people had become familiar with the respective advantages and disadvantages of two plans, a district system and a general ticket system. One writer had suggested a combination of the two modes, namely, that the respective states divide themselves into as many districts as there were members to be chosen, direct the voters to fix upon a member from each district, and then let the entire state vote for the whole number of members. By this mode, he declared, a knowledge of the local interests of every part of the state would be carried to Congress, but in such manner as not to interfere with the general interest of the whole state, the agriculture and commerce of the states would always be kept in friendship with each other, and none but men of real character and abilities would be returned, for such men are generally best known throughout every part of a state.¹ By the plan of choosing federal representatives at large, a friend of the general ticket urged, the pernicious acts of caballing and influencing would be avoided, and the best chance of obtaining the best man and the best abilities afforded.² The Constitutional provision that the legislatures of the respective states should

¹ Massachusetts Centinel, July 23, 1788.

² Ibid., November 1, 1788.

prescribe the times, places and manner of holding the elections³ showed no preference for either mode, and in deciding the question, the various state legislatures were generally guided by motives of policy, or by election custom.

A variety of election laws was passed, immediately after the passage of which, the political parties in the several states began to take measures for bringing suitable candidates before the public. It is very difficult, owing to the paucity of records of any kind, to follow these movements, but the political activities may be traced in three or four states.

Pennsylvania led off in favor of the general ticket system. The state as a whole was Federal, but there were strong Anti-federal sections which, had the district system been adopted, would have returned representatives from that party. So it was obviously the part of political wisdom for the assembly, which was strongly Federal, to adopt the general ticket system. Such an argument was not given by the supporters of that system on the floor of the assembly, however. There, when the report of the special committee showed that it favored the general ticket system, its opponents urged, on the grounds of expediency, that only by the district system could eight men⁴ have a particular knowledge of the local and common interest of their constituents throughout the state. To this it was replied that the district sys-

³ Constitution, Article 1, section 4.

Madison, in the Constitutional Convention, said, "These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot, or *viva voce*, should assemble at this place or that place, should be divided into districts, or all meet at one place, should all vote for all the representatives, or all in a district vote for a number allotted to the district—these and many other points, would depend on the legislatures, and might materially affect the appointments."

Elliot's Debates, edition of 1861, V. 401.

⁴ Pennsylvania was entitled to eight representatives.

tem was unconstitutional since it placed another qualification, not named in the Constitution, upon the candidate, namely, that he be an inhabitant of that particular district, or part of the state, from which it was proposed to choose him. If the state were divided into eight districts, each to choose one member, how could any one of them be called a representative of Pennsylvania, or how could confidence be reposed in a person disagreeable to seven-eighths of the inhabitants of the state,—not an impossible case. Moreover, when a person so chosen went to Congress, a body which judged the qualifications of its own members, might it not be urged against him that he was not a representative of Pennsylvania because he had been elected by only one-eighth part of the state, and for this reason the election be declared irregular and set aside.⁵ These arguments overcame the feeble opposition and the general ticket plan was easily carried.⁶ The act as passed provided for an election to be carried on in accordance with the general election laws of the state, on the last Wednesday of the following November. Each person voting was to deliver in writing on a slip of paper the names of eight persons to serve as representatives. These were to be selected from the citizens at large who were duly qualified by the United States Constitution. The eight receiving the highest number of votes were to be declared elected.⁷

Two political conventions were held in the autumn of 1788.⁸

⁵ Lloyd's Debates, September 24, 1788.

⁶ In proof that this was a political measure, see a letter from Benjamin Rush to Jeremy Belknap, October 7, 1788. "—— Our state has taken the lead in making arrangements for setting the new Government in motion. By obliging the whole state to vote in one ticket it is expected the Federalists will prevail by a majority of two to one in the choice of Representatives for the lower house of Congress." Collections of the Massachusetts Historical Society, sixth series, IV. 418.

⁷ Pennsylvania Session Laws, October 4, 1788.

⁸ J. S. Walton, Nominating Conventions in Pennsylvania, *American Historical Review*, II. 262 et seq.

The first, convened at Harrisburg September 3, a month before the passage of the election law, was called by the Antifederalists, primarily to discuss the revision of the Federal Constitution, but secondarily to nominate a list of persons for representatives and electors. No evidence is at hand to prove that the second object of the meeting was completely carried out, though a tentative list of names may have been agreed upon. Ten weeks elapsed between the meeting and the publication of the nominations, during which time the ticket was fully and finally decided by correspondence. It first appeared in the newspapers of Philadelphia, November 12, in an address to the freemen of Pennsylvania, signed by "A friend to Liberty and Union."⁹ This address referred to the Constitution, with its lack of amendments, as containing two great defects. The first of these was the unlimited power of Congress; the second, the want of provisions securing the rights of the individual. The article went on to say that the writer had learned, from his correspondents throughout the state, of a widespread desire to see the Constitution amended. And in the belief that the new Congress, if properly selected, would take the initiative in securing such amendments, it had been thought wise to place in nomination for representatives the following men: William Findley, Charles Pettit, William Irvine, Robert Whitehill, William Montgomery, Blair McClenachan, Daniel Heister and Peter Muhlenberg. This was known to the Antifederalist papers as the Whig ticket, but it was not completely Antifederal. Its promoters gave as a reason that a purely party ticket would not represent all classes of the population. The suspicion arose that at bottom it was a scheme to catch votes, and such a charge was later made.

The second convention was held by the Federalists November 3, at Lancaster. Its sole purpose was to nominate electors and representatives. This "conference" had been called immediately

⁹ *Independent Gazetteer*, November 12, 1788.

after the passage of the election law, and the party supporters in the different counties had at once held meetings and appointed instructed delegates. In Philadelphia "The Friends to the Federal Government" met at the state house, October 11, and appointed a ward committee to nominate delegates.¹⁰ This committee reported on October 18, in favor of James Wilson and George Latimer, who were thereupon elected. The same committee was then further instructed to name six suitable Philadelphians, from among whom the city's share of the congressional delegation might be chosen.¹¹ These names were reported at a third meeting October 25.¹²

In some of the county meetings general requisites rather than specific persons were recommended. The party in Northumberland, a typical county, gave the following instructions to guide its delegates in choosing congressional nominees: "let integrity and decency of character be considered as the first qualification, industry and application to business as the second. No brilliancy of talents, or show of knowledge, should atone for the want of the above qualities. Thirdly, extensive information, and some degree of practice in agriculture, commerce and manufactures, with a general knowledge of the laws of the land are necessary. But as it may be objected, that men qualified in all the above respects cannot easily be found—and that different men adapted to the different interests might be chosen, we recommend something of the following kind: That two able merchants who may attend to the interest of commerce, one person remarkably attached to the interests of manufactures, and an eminent law character, with four substantial yeomen, should form our representation in Congress."¹³ It was also advised, because of the large body of Ger-

¹⁰ Pennsylvania Packet, October 13, 1788.

¹¹ Ibid., October 20, 1788.

¹² Ibid., October 27, 1788.

¹³ Ibid., October 23, 1788.

man voters in the state, that a part of the representation be able to do business in the German language.

The state conference was held at the appointed time and place. Thirty delegates, representing every county in the state except Luzerne, were present and nominated the following men: Thomas Hartley, Henry Wynkoop, George Clymer, Thomas Scott, Thomas Fitzsimons, F. A. Muhlenberg, Stephen Chambers and John Allison.¹⁴

The German voters of the state were dissatisfied with both tickets because they included so few men of that nationality. Not having time, however, to form a new ticket, they revised those already in the field in such manner that each German might vote for his own party, and at the same time for three Germans. For Chambers and Allison of the Federal ticket, they substituted Heister and Peter Muhlenberg, two German Federalists on the Antifederal ticket; and the name of Whitehill on the Antifederal ticket they replaced with that of F. A. Muhlenberg, a German Federalist on the Federal ticket.¹⁵ Thus, there were four tickets before the voters, no one completely independent of the others.

During the next two weeks a vigorous campaign was carried on. The Federalists urged the voters to support the new Constitution, the Antifederalists appealed for the protection and preservation of the liberties of the people. In the election, held November 26, Philadelphia and its surrounding counties returned large Federal majorities, and it seemed that the full Lancaster ticket had been elected. But as the reports from the more distant counties gradually came in, majorities appeared on the other side. Especially was this true of the returns from Cumberland county, which out of a total of about 1850 gave a majority of about 1300 to the straight Harrisburg ticket. The final result showed the Federal ticket, as revised by the Germans, to have won, F. A.

¹⁴ *Pennsylvania Packet*, November 8, 1788.

¹⁵ G. D. Luetscher, *Early Political Machinery in the United States*, pp. 128-130.

Muhlenberg leading with 8736 votes, and the other successful candidates running from 450 to 1300 votes behind him. A total vote of about 14615 was cast.¹⁶

The general ticket system was put into operation in Connecticut also, but not as a political move. In that state the twelve assistants or magistrates were chosen annually on a general ticket, and this was the easiest and most natural method for the choice of representatives. The time and manner of proceeding were arranged as follows: the freemen were to meet in their respective towns on November 10, and each was to vote for twelve persons qualified for representatives. The presiding officers of the town meetings were then to send the result of the vote to a committee consisting of one person from each of the eight counties in the state. This committee was to meet November 19, sort and count the votes and publish the names of the twelve persons having the greatest number. The towns were then to hold a second meeting on December 22, when each freeman was to vote for any five of these twelve persons. The results of this second meeting were to be sent to the general assembly which was to meet January 1, and the assembly was to sort and count the votes, and declare the five persons elected.¹⁷

The election was apparently conducted without political excitement.¹⁸ The twelve persons nominated November 10, were all men of ability, active in state and continental affairs, and all were evidently Federalists. At the election on December 22, the voters returned the first five on the list, namely, Jonathan

¹⁶ Independent Gazetteer, January 2, 7, 1789.

¹⁷ This does not appear in the session laws, but was passed as a resolve, and is in the Connecticut Courant of October 20, 1788. The Courant does not give any of the debates of the assembly.

¹⁸ The Connecticut Courant is almost destitute of any news of this election.

Sturges, Benjamin Huntington, Jonathan Trumbull, Roger Sherman and Jeremiah Wadsworth.¹⁹

New Hampshire also decided in favor of the general ticket system. By the provisions of an act passed November 12, 1788,²⁰ the election was appointed for the third Monday of the following December. Each qualified person was entitled to vote for three representatives, the full quota from New Hampshire. In order to be elected, a candidate had to receive a majority of the whole number of votes cast. If there should be failure to elect any or all of the three, the general court was directed by law to make out a list of persons receiving the highest number of votes,—the list to include twice as many as there were representatives lacking. These names were to be sent to the towns, and a second election held on the first Monday of the following February.

The situation was complicated on December 15, the third Monday, by an excessive number of candidates. With only three to be elected, votes were cast for seventy.²¹ As 15377 votes were counted, and each qualified citizen was allowed to cast his ballot for three candidates, 5126 persons must have voted. One over one-half, the necessary majority to elect, would have been 2564, but as no candidate received such a vote, a second election, to take place on the first Monday in February, 1789, was ordered, and a list of the six persons standing highest sent out to the voters.²² On February 21, 1789, the president and council of the

¹⁹ The remaining seven nominees were S. M. Mitchell, John Chester, James Hillhouse, Erastus Wolcott, Jesse Root, John Treadwell and Jedediah Strong. *Massachusetts Centinel*, November 29, 1788.

²⁰ *Laws of New Hampshire*, 1789.

²¹ *Pennsylvania Packet*, January 23, 1789.

²² The vote for the six candidates standing highest at the first trial was as follows:

Benjamin West, 2374	Samuel Livermore, 2245	Paine Wingate, 2054
Abiel Foster, 1236	John Sullivan, 1053	Nicholas Gilman, 861.

Massachusetts Centinel, January 14, 1789.

state, having examined the returns from the second trial, announced that Benjamin West, Samuel Livermore and Nicholas Gilman had been chosen.²³ Mr. West at once resigned, and an election to fill that vacancy was ordered to take place June 22, 1789. The New Hampshire delegation was then completed by the choice of Abiel Foster.²⁴ Party politics had apparently influenced the situation little or not at all. Of the six persons standing highest in the election returns at the first trial, all were Federalists. The seventh on the list, Joshua Atherton, had been opposed to the ratification of the Constitution on moral rather than political grounds, being inimical to its provisions concerning slaves and slavery.²⁵

New Jersey, the fourth state to decide in favor of the general ticket plan, also put into operation a popular nomination system. But this feature of her law was very unlike that in Connecticut, and did not serve so well to eliminate surplus candidates. It was enacted that any qualified voter might nominate four persons, the quota of representatives to which New Jersey was entitled. These nominations, to be made in writing, were to be deposited, at least thirty days previous to the election, with the clerk of the court of common pleas of the county in which the person making the nomination resided. The clerks in the respective counties were then to transmit the nominations to the governor, who was to publish them in the state newspapers and send complete lists to all the sheriffs. No persons except those on this list could be elected. The election was to be by ballot, and commence on the second Wednesday in the following February. The election judges were to forward the returns to the governor, who, with the assistance of the executive council, was

²³ State Records of New Hampshire, XXI. 257.

²⁴ Massachusetts Centinel, July 21, 1789. The election of Foster completed the election of representatives to the first Congress from the eleven ratifying states.

²⁵ Appleton's Cyclopaedia of American Biography, I. 114

to sum up the whole number of votes cast, and commission the four persons receiving the highest number.²⁶

The law of November 21, 1788, providing for an election in the following February, had scarcely passed before electioneering began. The contest was not one between political parties, but between sections of the state. Before the legislature adjourned, a complete congressional ticket (later known as the Western ticket),²⁷ composed of two persons from East Jersey and two from West Jersey, was formed in a secret caucus of members of the assembly. The origin of this ticket was designed to be a secret, but the truth soon leaked out, whereupon the following article appeared. It was published in the *New Jersey Journal*, was addressed to the inhabitants of New Jersey, and was signed "A Freeholder."

"Within a few weeks you will be called upon to give your suffrages for *four men* to represent you in the Congress of the United States. This important privilege ought to be estimated by you at its true value, and your unbiased judgment should be exercised upon this occasion. And now, my fellow citizens, suffer me to warn you from being misguided by some of those who, for quite another purpose, you have placed great trust in.

"I happened lately to be at Princeton, where a number of *great men* were sitting, and I discovered that a junto had formed a ticket for you, which is to be secretly ushered into the several counties as if not coming from them; as I do, from my heart, most cordially abhor and detest all secret cabals and juntos, I think it a duty incumbent upon me to apprize you of their conduct that you may avoid the snare that is privately laid for you.

"The ticket which they have formed consists of the following names: *Elias Boudinot* and *James Schureman* of East Jersey, and *Lambert Cadwalader* and *Thomas Sinnickson* of

²⁶ Session Laws of New Jersey, November 21, 1788.

²⁷ It is not easy to explain why this became known as the West Jersey ticket. Perhaps it was because its chief promoters were West Jersey men.

West Jersey. Some of these gentlemen, if it had not been for the very improper manner in which they are attempted to be passed on you, might be well entitled to your votes; but under the present circumstances, as we have many as suitable men, it will be proper to reject them; and particularly at this time, as a lesson to our *great men* not to meddle with matters which do not belong to them.

"I shall, in a future paper, present you with some strictures upon the conduct of two of those gentlemen, which will, I trust, satisfy you that they ought not to be the men of your choice; at present I shall close, after using a privilege which every citizen is entitled to, that is, of nominating four candidates, who I intend to vote for— *Jonathan Dayton* and *Thomas Henderson* of East Jersey, and *John Cox* (of Trenton) and *Joseph Ellis* (of Gloucester) of West Jersey. These gentlemen have at least one advantage over the others—they are not proposed by a secret junto."²⁸

The following number of the Journal contained a sarcastic reply which, while it virtually admitted that the "Freeholder" was correct in his statements as to the origin of the ticket, declared in substance that the "great men" were better acquainted throughout the state than the ordinary citizen, and so better qualified to suggest proper persons to send to Congress.²⁹ No other

²⁸ New Jersey Journal and Political Intelligencer, December 10, 1788. If the author of this public letter was correct, and the result of the election indicates that he must have been, this is the record of a caucus antedating by about a month the Maryland caucus, which Luetscher (in his *Early political Machinery of the United States*, pp. 107-108), calls the first. It also appears that Luetscher is mistaken in his conclusion, "the Convention was the only state machinery that ever gained a foothold in New Jersey."

²⁹ New Jersey Journal, December 17, 1788. Considering the later success of this ticket, it is probable that much correspondence and personal work was done to further its interests.

defense of the action of the caucus and no address or appeal in behalf of the Western ticket appeared. Newspaper efforts were directed chiefly towards attacking or defending individual candidates rather than complete tickets. The merits of several other tickets were presented from time to time, though apparently none became known as distinctively "Eastern" in opposition to the Western ticket. According to the provisions of the election act, the governor was to publish in the newspapers of the state and of Philadelphia and New York, eighteen days prior to the election, the list of persons legally nominated. This list came out January 19, and contained fifty-four names, including all of the chief public men of the state³⁰

The polls opened, as provided by law, on the second Wednesday in February. By the latter part of the month, seven of the eight eastern counties had closed their polls and sent their returns to the governor.³¹ On February 27 the governor summoned the council to meet him at Elizabethtown March 3, but no more returns had been received by that date, and after fixing upon March 10, as the time for closing all the remaining polls of the state, the council was adjourned to March 18.³² In the meantime the eastern counties were becoming incensed at the western counties for not sending in the returns. It was freely declared that the delay was due to a desire to profit by a knowledge of the returns from the eastern part of the state.³³ In consequence of this hard feeling, Essex, the one eastern county which had not made up its returns, determined to disregard the order of the governor and council to close the polls by March 10, and to simply adjourn the polls until March 18.³⁴ By the time of the second meeting of the council therefore, while the five western

³⁰ New Jersey Journal, January 21, 1789.

³¹ Ibid., February 25, 1789.

³² Independent Gazetteer, March 14, 1789; New Jersey Journal, March 18, 1789.

³³ Pennsylvania Packet, March 16, 1789.

³⁴ Ibid.

counties had sent in their returns as ordered, the Essex polls were still open.³⁵ On March 19, Governor Livingston issued a proclamation reciting the provisions of the election act which authorized him to call a meeting of the council to sum up the results of the election, and declared that the meeting had convened on the 18th, but that one of the thirteen counties was yet to be heard from. As the state might suffer detriment, however, by remaining unrepresented in Congress, the governor and privy council thought it for the public good and agreeable to the true intent and meaning of the act, to proceed with the canvass of the votes from the twelve counties. The decision of the legality of the election as thus decided was to be left "to whom it appertains." Whereupon James Schureman, Lambert Cadwalader, Elias Boudinot and Thomas Sinnickson were declared to have received the greatest number of votes from the twelve counties. "All those whom it may concern," the proclamation concluded, "are to take notice and govern themselves accordingly."³⁶

Rumors to the effect that this did not end the affair, that Congress would be asked to interfere, at once began to circulate. It was pointed out that from the whole tenor of the proclamation three conclusions might fairly be drawn. These were that the governor himself entertained strong doubts of the legality of the election and returns; that he had thought proper to refer the decision thereupon to the House of Representatives ("to whom it

³⁵ Maryland Journal, March 31, 1789.

³⁶ Independent Gazetteer, April 1, 1789.

The returns from the eastern counties gave the four leading places to Schureman, Clark, Dayton and Hoops. With the exception of Schureman the members of the Western ticket received scant support in the east, Boudinot dropping to ninth place, Cadwalader to tenth, and Sinnickson to fourteenth. (New Jersey Journal, February 25, 1789.) But the heavy vote in the five western counties for the caucus nominees overcame the adverse vote of the east.

appertains") and this in such terms as carried with them a strong recommendation to the House to take it under consideration; and lastly, that bare certificates agreeing in substance with the proclamation, instead of commissions under the great seal, would be issued to the four gentlemen in question.³⁷ The situation was briefly described by Madison in a letter to Washington, as follows: "In New Jersey the election has been conducted in a very singular manner. The law having fixed no time expressly for closing the polls, they have been kept open three or four weeks in some of the counties, by a rival jealousy between the Eastern and Western divisions of the State, and it seems uncertain when they would have been closed if the Governor had not interposed by fixing on a day for receiving the returns, and proclaiming the successful candidates. The day is passed, but I have not heard the result. The Western ticket..... is supposed to have prevailed, but an impeachment of the election by the unsuccessful competitors has been talked of."³⁸

This talk soon developed into action. Under the sanction of one of the candidates from Essex (supposedly Abraham Clark), petitions to Congress praying that the election might be set aside were circulated.³⁹ These petitions were presented to Congress on the 28th of April, and on the following day were referred to the committee of elections. The friends of the Western ticket had not allowed all this activity to pass unnoticed. Counter petitions were circulated through the state and reached Congress May 12 and 15. On the 25th of May the House appointed a special committee before whom the petitioners were to appear and present such proofs and allegations as they might wish to offer in support of their petitions. The committee was also to

³⁷ New Jersey Journal, April 1, 1789.

³⁸ Writings of Madison, V. 330. Writing to Jefferson, Madison spoke of the inaccuracy of the New Jersey law as producing a delay almost equal to that in New York.

³⁹ Maryland Journal, April 3, 1789.

hear the opponents of each petition, and then report to the House all the facts in the case.⁴⁰

On July 14, the committee stated to the House that certain allegations in the petition required testimony which they did not consider themselves authorized to collect, as it would have to be taken in New Jersey. The question had also arisen as to whether the petitioners might be aided by counsel, and the committee requested the direction of the House on these matters.⁴¹ A long debate on the proper mode of procedure ensued, but no decision was reached, and the subject was dropped until August 18, when the main facts of the New Jersey election were reported.⁴² This report came up for debate September 1 and 2, and both petitioners and counter petitioners were well supported on the floor of the House. The main question at issue was over the authority of the New Jersey governor to declare the result of the election before the returns were all in. Upon the premises all were agreed,—the New Jersey law declared the election of Congressmen should be in the same manner as the election of representatives for the state legislature; the law for the election of the latter fixed no time of limitation for the receipt of returns, but the practice had been to send them in time to declare the result before the date of meeting of the legislature; the late law had evident respect to the time at which Congress was to meet, and so by reasonable construction the intention of the law was that the election should be declared before the day appointed for the assembling of Congress. But at this point the arguments diverged. Upon the one side it was held that the result should have been declared on March 3, and that the governor had no right to extend the time for receiving returns beyond that day. If he could extend the time one day he could do it for an unlimited number of days, and so defeat the law. But, ad-

⁴⁰ House Journal, First Congress, p. 40.

⁴¹ Lloyd's Congressional Register, II. 76.

⁴² House Journal, p. 83.

mitting that he had a right, it became a question as to how long he should delay. The law declared that the result was to be fixed by *the greatest number of votes from the whole state*. Evidently then, the governor would have to wait until all the votes were in. This would put the power of defeating the law into the hands of a single county, but that was the fault of the state assembly in passing such an imperfect law, and the state would have to suffer.

This construction was pronounced absurd by those who supported the validity of the election. It might have happened, they argued, that no county would have made returns by March 3; would it then have been required that the governor declare the persons elected? On the other hand, to wait until all the returns had been made would have placed the power of defeating the election with one county,—a construction foreign to the spirit of the law and disastrous to the state. This was one of those cases in which the executive might properly interpose his discretionary authority where the law was dubious and yet must be carried into operation. Such authority had been properly used to postpone the determination of the results for such a reasonable time as would allow the returns to be sent in. At the end of that time twelve of the thirteen counties had actually made returns, and Congress was assembling with the state unrepresented. The governor was then justified in announcing the election.⁴³

After a debate of two days this latter view was accepted, and the New Jersey members were declared to be duly elected and returned.⁴⁴

Georgia and Maryland each adopted a plan which was evidently a compromise between the general ticket and district systems. In the Maryland assembly a committee which had been appointed to bring in a bill for the election of representatives reported November 24, 1788. Its plan was that the people of the

⁴³ New Jersey Journal, September 9 and 16, 1789.

⁴⁴ House Journal, p. 95.

western shore, by an election in each county, elect four representatives, and the people of the eastern shore in the same manner elect two.⁴⁵ This was negated and it was resolved instead that the state be equally divided into six districts. A proposition that each district elect one representative was voted down, and then it was resolved that the people of the state entitled to vote should vote for six persons, one to be from each of the six districts, the person in each district receiving the greatest number of votes of all the candidates in that district to be declared elected. The bill as finally passed carried out this resolution. In addition it was enacted that the election should be viva voce and should be held the first Wednesday of the following January.⁴⁶

While the Antifederalists in Maryland were in a decided minority, the feeling between the two parties, owing to the tactics of the Federalists in the state convention, was extremely bitter.⁴⁷ Soon after the passage of the election law, both parties took steps to carry their contest to the polls. The ticket of the Antifederalists was announced as coming from "a number of gentlemen who are zealous guardians of the rights of the people, and avowedly opposed to that aristocratic spirit and influence which are dangerous to Public Liberty, and already too prevalent in the councils of this state."⁴⁸ Its promoters warmly recommended their nominees to the citizens of Maryland as a respectable and safe representation in that crisis of public affairs.

The Federal ticket was brought out at Annapolis by a caucus of members of the general assembly and friends of the Con-

⁴⁵ Maryland Journal, January 13, 1789.

⁴⁶ Maryland Session Laws, December 22, 1788.

⁴⁷ Elliot's Debates, II. 547-556.

⁴⁸ Maryland Journal, December 26, 1788. The ticket included George Dent, J. Seney, J. F. Mercer, Samuel Sterett, W. V. Murray and A. Faw

stitution.⁴⁹ It was immediately indorsed at a meeting in Baltimore and a committee to advertise it throughout the State was appointed. An address to be sent to influential men in each district and to be published in the newspapers was adopted. "With respect to the gentlemen nominated for Representatives," so the address ran, "we have reason to believe that the framers of the ticket were careful to select persons acceptable throughout the state for honor and integrity, unequivocal friends to the new Constitution, of mature experience in governmental concerns, and well acquainted with the general interests of the United States; and we trust, if elected, that they will so approve themselves to their countrymen and the World. But should the friends of the new government, in the different districts, unfortunately conceive that they can find men better qualified for Representatives than the above named, and vote, each according to their several opinions, without concerting a new ticket, the consequence must be, the certain loss of the Federal Ticket, without their carrying the men they vote for. Such a measure, at this juncture, it is justly apprehended, would throw everything into the hands of the Antifederalists, who will, no doubt, on this as on former occasions, be unanimous in support of their ticket.

"The necessity of a strict union of votes among the Federalists will further appear from contemplating the Antifederal ticket. The contrivers of that ticket have artfully introduced into it some Federal characters, in the hope that their deserved popularity, in their several counties, would draw to them the votes which would otherwise be given to members of the Federal ticket,⁵⁰

⁴⁹ Maryland Journal, December 30, 1788. The Federal ticket was as follows: M. J. Stone, J. Seney, Benj. Contee, William Smith, George Gale, Daniel Carroll.

⁵⁰ Joshua Seney, W. V. Murray and, probably, A. Faw were the Federalists who were placed on the Antifederalist ticket. This was the same plan, it will be remembered, by which the Pennsylvania Antifederalists had hoped to win.

by which means they expect to divide the Federal interest, and thereby increase the chances in favor of the Antifederalists; for it is plain that whatever will lessen the number of votes for any member in the Federal ticket, will be a decided advantage to some member in the opposition ticket—and this advantage must be in favor of the Antifederalists who will vote alike, and without any division.”⁵¹

Beyond the issuing of this address, little electioneering was done because of lack of time, for the election occurred January 7. The general returns showed that the Federal voters had heeded the above appeal to unite on the caucus ticket, and, as was predicted, the Antifederalists had also voted solidly for their party. Few votes were cast for candidates outside of these two lists.⁵² The Federalists were completely successful, receiving over

⁵¹ Maryland Journal, December 30, 1788.

⁵² Returns given in the Maryland Journal, January 23, 1789.

The following extract of a letter from a German farmer in Washington County, Maryland, gives a good description of the manner in which the election was conducted in country districts. Washington County cast 1164 votes for every one of the successful candidates on both the congressional and electoral tickets, and no votes for any other candidate. This letter, written to a friend in a less unanimous district, throws light on the reason for the unanimity of Washington County.

“We had pain when we heard of the people of your district that they were wrong, and we thought it right to call the friends of the new government to give in their votes at the court-house, so we made out so many as 1167 [1164] for the Federal ticket, and no man said against it. The last day you would wonder to see so much people together, two or three thousand maybe, and not an Anti. An ox roasted whole, hoof and horn, was divided into morsels, and every one would take a bit. How foolish people are when so many are together, and all good-natured. They were as happy to get a piece of *Federal ox* as ever superstitious Christians or Anti-Christians were, to get relics from Jerusalem. . . . Much attachment and good will is shown for the cause. I was afraid of mischief by the cannon, and such numbers of folks together; but our people are well-minded, and we hope, under the new government, our happiness will be made secure. . . . I am sorry for your differences, but they don't injure us. Even the name *Federal* will soon be forgotten here; there is no *Anti* to keep it in remembrance.” Pennsylvania Packet, January 23, 1789.

two-thirds of the total vote cast. Political contention did not cease, however, with the election. Newspapers busied themselves at once expressing the dissatisfaction. The election law came in for its share of blame. One writer took up each of the six districts of the state, showed the number of estimated votes, the number of votes actually cast and for whom cast, and reached two conclusions. His first was that of 20700 votes in the state, only 8195 were cast.⁵³ His second was that had the law allowed the people of each district to vote for one representative, not confining them to elect a resident of the district but one of the state, the following persons, on the face of the returns, would have been elected: Joshua Seney, Daniel Carroll, Samuel Sterett, J. F. Mercer, George Dent and George Gale—that is, three Federalists and three Antifederalists. He characterized the law as unconstitutional because it added another qualification for representatives.⁵⁴ In answer it was acknowledged that since the Federalists had been in power in the state assembly, they had constructed the law in such a manner as to make the success of the Federal ticket most probable. But it was also maintained that, had the opposite party been the stronger, they would have taken that advantage for themselves.⁵⁵

Georgia, through its militia organization, was already divided into three brigade districts. As the state was entitled to three representatives, it was enacted that each voter, while voting for three persons, must choose one from each of these three sections. Candidates had to be of three years' standing residence in their respective districts, and the election was appointed for February 9, 1789.⁵⁶

⁵³ Other writers contended that his estimate of the number of voters was too low, but at any rate the number of votes cast was considerably under one-half the number of electors in the state.

⁵⁴ *Maryland Journal*, February 3, 1789.

⁵⁵ *Ibid.*, February 13, 1789.

⁵⁶ "An Act for appointing the time, manner, and places for holding elections for representatives in Congress," January 23, 1789. The substance of this act is in the *Independent Gazetteer*, March 11, 1789.

Little is known of the Georgia election beyond this date and the names of the candidates chosen. The law was approved January 23, leaving little time, even had there been inclination, for electioneering. In the first or eastern district, General James Jackson was chosen over Henry Osborne. The latter had voted in favor of the ratification of the Constitution in the state convention, but, so far as is known Jackson was also on that side.⁵⁷ In the second or middle district, Abraham Baldwin was returned, and in the third or western, George Mathews. Baldwin had been a member of the Continental Congress from 1785 to 1788, and a member of the Federal Convention at Philadelphia. Mathews had been a member of the state convention which ratified the Constitution.

A still nearer step to the pure district system was taken by the two states of New York and South Carolina. The latter state was divided by the legislature into five districts, each to choose one member, but a candidate did not need to be an inhabitant of the district for which he was chosen. It was provided that if a person was chosen by two different districts, he was to decide within twenty days which he would serve, and a second election was to be held in the district left without a representative. The election was to be held at the usual time for the election of assemblymen.⁵⁸ According to the state constitution, this was the last Monday in November and the day following.

For the election in that state the records are just as bare as for Connecticut, but from the results it seems that the contest was more exciting. Of the five representatives returned, four

⁵⁷ Georgia had ratified the Constitution unanimously. We are thus left without this means, used in many of the other states, of checking off the opponents of the Constitution. U. B. Phillips, in his *Georgia and State Rights*, American Historical Association Reports, 1901, II. 21, gives the only known records of the Georgia convention.

⁵⁸ Statutes at large of South Carolina, V. 84. November 4, 1788.

were Antifederalists.⁵⁹ From the district of Camden came General Thomas Sumter who had endeavored in the state convention to have action on the Constitution postponed. From Ninety-six was returned Aedanus Burke, who had worked and voted against the Constitution. And from the other two country districts Daniel Huger, and T. T. Tucker, both former delegates to the Continental Congress, but both Antifederalists, were elected. Charleston alone returned a Federalist, William Smith.

The choice of Smith gave rise in Congress to the first case of contested elections. On April 15, 1789, David Ramsay, of South Carolina, petitioned the House to set aside the election of Smith, alleging that at the time of his election lack of citizenship for the requisite seven years had rendered him ineligible. This case was taken up carefully by Congress, as the mode of investigation and the decision might be precedents for all future cases. It was decided on April 18, that the proofs of Smith's ineligibility should be presented to the committee on elections, Smith to have the right to examine witnesses and to introduce counter proofs. A month later, after the committee had presented a statement of facts, a lengthy debate ensued over the question as to whether to continue the proceedings in the House, or to recommit with instructions to read the documents and to present a shortened report. On the grounds that the Constitution had provided that the House should be judge of its own elections, and that it would be very improper to delegate this power of judgment to any group of men, the House decided to examine the evidence and to give decision itself.

It was shown against Smith that he was born in 1758 while

⁵⁹ Hildreth (IV. ch. 1) concludes that "a sudden revolution in the politics of South Carolina" had caused the election of this Antifederal delegation. This is not borne out by the facts for the country districts which elected Antifederalists had voted in the legislature against calling a state convention, and had voted in the convention, though with less unanimity, against the Constitution. Elliot's Debates, IV. 253 et seq.

South Carolina was still a British colony, that his parents had died many years before the Declaration of Independence, that he had resided abroad from 1770 to 1783, and that he had been elected to Congress in 1788, not having been a citizen of the United States the constitutional period of seven years. Ramsay contended that citizenship in the United States could be acquired only by birth or inheritance, by being a party to the Revolution, by taking an oath of fidelity to some one of the states, by tacit consent, or by adoption. By none of these modes, the petitioner alleged, had Smith gained citizenship.

In reply Smith submitted that South Carolina had in fact considered him a citizen. Under the state constitution, no one was eligible to a seat in the legislature until he had resided three years, nor to a seat in the council until he had resided five years, in the state, yet he had held a seat in both bodies before he had been two years in the state and no one had objected. His parents indeed had died before independence was declared but his guardians, who stood in loco parentis, were residents of Charleston. As a member of the society of South Carolina, he owed and paid allegiance to the King of England before the Revolution, but when that society separated from Great Britain his allegiance was transferred with that of the society of which he was a member. The legislature of South Carolina had taken this same position in an act passed in 1779, by which it was provided that young men sent abroad for their education should be allowed to remain until they reached the age of twenty-two, after which, if they had not returned, they should be doubly taxed. This implied that citizenship remained in the state, though there was a penalty to pay for absence.

Taking these statements into consideration, the House decided by a vote of thirty-six to one that William Smith, at the time of his election had been seven years a citizen of the United States.⁶⁰

⁶⁰ Clarke and Hall, *Cases of contested elections in congress, 1789-1834*, pp. 23-37.

In New York, the bill which passed the lower house December 22, 1788, providing for the election of United States senators and representatives and presidential electors, and which afterwards failed in the senate, divided the state into six districts, each to choose one representative from the state at large. Efforts were made to amend in the house by including the condition that the person chosen by a district should be an inhabitant of that district, but this was rejected on the ground that it prescribed an additional qualification, and so was unconstitutional. Efforts were also made to amend by a proposal to strike out the district feature because, it was argued, persons chosen by the districts did not represent the state. This was rejected on the ground that the people could not possibly be acquainted with six proper persons throughout the state, and so would not know for whom to vote.⁶¹ The bill, which finally became a law did not materially differ from the above. Each qualified person was to vote for one representative who should be an inhabitant of the state. The election was to be held on the first Tuesday in March, and the vote canvassed and the successful candidates announced the first Tuesday in April, 1789.⁶² This was the latest date fixed by any of the eleven states for the election of representatives.

Judged by the lower house of the assembly of 1788-1789, the state was clearly Antifederal, and had a general ticket system prevailed this party would probably have elected the full state contingent. But when it was the district system that went into operation, the Federalists had high hopes of electing two members from the southern part of the state, the stronghold of their party.⁶³ As the campaign progressed, the Antifederalists were seen to be losing ground, and before the returns were canvassed, the Federalists claimed the election of William Floyd from the

⁶¹ Pennsylvania Packet, January 6, 1789.

⁶² Session Laws, January 27, 1789.

⁶³ Alexander Hamilton to T. Sedgwick. Works of Hamilton, IX. 456.

district composed of the counties of Suffolk, Queens, Kings, and Richmond, of John Lawrence from the New York city district, and of Egbert Benson from the district of Dutchess and Worcester counties.⁶⁴ The final canvass showed not only the election of these three, but also of Peter Sylvester, a Federalist from the strong Antifederal district of Columbia, Washington, and Clinton counties.⁶⁵ The Antifederalists were successful in two districts. From Ulster and Orange counties they elected John Hat-horn, and from the district of Albany, Jeremiah Van Rensselaer.

The states adopting a pure district system were Massachusetts and Virginia. The committee in the Massachusetts general court which had the matter in charge presented a report November 4, 1788. In so far as it related to the election of representatives, it provided for the division of the state into eight districts. Each of these districts was to choose one representative, but the inhabitants were not obliged to confine their choice to a citizen of that district. The districts were to be made as nearly equal as possible without dividing counties. An absolute majority vote only could elect. In case no person received such a majority the voters were to decide at a second poll between the two candidates highest on the first returns. Should these two receive an equal number of votes at the second trial, the members of the legislature from that district were to choose between the two.⁶⁶

⁶⁴ Madison to Washington, March 19, 1789. "The Federalist party calculates on an equal division of the six." *Works of Madison*, V. 330.

⁶⁵ *Life of Peter Van Schaack*, by Henry C. Van Schaack, New York, 1842, p. 429.

In Dutchess and Worcester counties, Benson was hard pushed by T. Bailey. The latter received 574 votes while Benson had only ten more. *Freeman's Journal*, April 15, 1789.

R. B. Lee wrote to his friend, L. Powell of Virginia, April 13, 1789, "Strange that the sense of the people of this state [New York] should also be contrary to that of the legislature." *Branch Papers*, I. 220.

⁶⁶ *Massachusetts Centinel*, November 5, 1788, et seq.

Against the strong opposition of Berkshire county, the members from which declared it had not received justice in districting the state, the report was adopted, but with important changes. It was decided that each representative must be an inhabitant of the district from which he was chosen, and no provision was made for limiting the number of candidates to two in case a second election was necessary. If no choice was made at the second election a third was to be held, and so on until there was a choice.⁶⁷

Political activities in Massachusetts cannot readily be followed, partly because there was no extra-legal machinery for nominating candidates, and partly because personal electioneering was despised and would have hurt rather than helped the candidates' chances, but chiefly because the district system localized party conflicts. Only a few months before, in choosing members of the state convention to act upon the national Constitution, the mass of voters had shown itself strongly Antifederal, and it was wholly because of the tact and talent of the Federal leaders that the Constitution had been ratified. Since that time public sentiment had changed considerably in favor of the Constitution party,⁶⁸ and the state was now so evenly divided that in nearly every district the election was warmly contested. As the resolve of the general court fixing upon December 18 for election day was not passed until November 20, less than a month intervened in which the respective parties might decide upon suitable candidates. In that short time many names were proposed. Without time or machinery for the elimination of surplus aspir-

⁶⁷ Acts and Resolves of Massachusetts, October Session, 1788.

⁶⁸ "A striking instance of the rapid progress of federal principles was seen at Attleborough . . . at the election of a representative for the new federal government. The Hon. George Leonard had 88 votes, the Hon. Phanael Bishop 12 votes. By the above vote it appears that Attleborough is now more than 7 to 1 federal, whereas in April, 1787, said Hon. Bishop had a majority of votes in said town for a senator." *Pennsylvania Packet*, January 6, 1789.

ants, union of party sentiment was impossible, and where such a union would frequently have brought party success, its lack resulted either in defeat or, because the other party was equally divided, at best a draw.

Four of the eight districts, however, managed to elect representatives at the first trial. In Suffolk the three leading candidates were Samuel Adams, Fisher Ames and General Heath, all Federalists who had supported ratification in the state convention. Adams, known as the "amendment monger," was supposed to be only luke-warm in his advocacy of the Constitution and, while strongly defended by a few of his Federalist friends, was supported mainly by the Antifederalists. Ames, on the other hand, had debated eloquently for the Constitution, and although he had seen far less public service than Adams or Heath, was more popular at the moment. In spite of the deflection of votes to Heath, Ames prevailed in the election by a narrow majority. The southern district (Plymouth and Barnstable) easily returned George Partridge, a Federalist and a former member of the Continental Congress, who ran against James Warren, prominent in the Revolution. The district composed of Bristol, Dukes, and Nantucket elected General Leonard, and the eastern or Maine district returned George Thacher, both Federalists.⁶⁹ For the four remaining districts a second election was ordered, to take place January 29.

In Middlesex at the first trial, Elbridge Gerry, conspicuous in public service for years, but one of the three delegates at the Philadelphia Convention who at the last minute had refused to sign the Constitution, was pitted against Nathaniel Gorham, a staunch Federalist and supporter of the Constitution as well as a colleague of Gerry at Philadelphia. Gorham would probably have been chosen had not J. B. Varnum and General J. Brooks, two members of the state convention who had favored the Con-

⁶⁹ Pennsylvania Packet, January 20, 1789.

stitution, also been candidates.⁷⁰ Gorham withdrew before the second trial⁷¹ and Gerry was elected, but only after he had published an address to the electors declaring his opinion that as the new system had been adopted, every citizen of the ratifying states was in duty bound to support it, and that opposition to a due administration of it would not only be unjustifiable, but highly criminal.⁷²

The contest in Essex at the first trial was between men rather than parties, for the two principal candidates were both Federal. Neither was able to score a victory because over one-third of the total vote was scattered among the large number of other candidates entered. At the second election, January 29, Benjamin Goodhue, an able merchant and a state senator, was chosen by a large majority.⁷³

The greatest struggle in Massachusetts took place in the two western districts, the chief seat of Shays' Rebellion. Neither of these districts was able to make a choice at the first or second poll, and a third was accordingly ordered for March 2. In Worcester district the two foremost candidates, Jonathan Grout and Timothy Paine, were both Antifederalists. Artemas Ward was their chief opponent. A union of Antifederalists would have resulted in an election at the first trial, but it was not until the third that the friends of Grout by a great effort succeeded in electing him. Grout had been a Shays partisan in 1786, and at the state convention had voted against the Constitution. In the district composed of Hampshire and Berkshire counties, Thomas Sedgwick, a Federalist of Berkshire, was opposed to William Lyman an Antifederalist of Hampshire. The local feeling between the

⁷⁰ The result of the first trial was as follows: total vote cast 1473, necessary for a choice 737, Gorham received 536, Gerry 384, Varnum 254, Brooks 106, and scattering 193. *Pennsylvania Packet*, January 20, 1789.

⁷¹ *Pennsylvania Packet*, January 19, 1789.

⁷² Austin's *Gerry*, II. 93.

⁷³ *Massachusetts Centinel*, February, 1789.

two counties became almost as bitter as the party feeling.⁷⁴ To complicate the difficulty there were several other candidates; Skinner of Berkshire, a Federalist who had voted for ratification in the state convention drew many votes from Sedgwick, while Whiting of Hampshire lessened the Lyman vote. A fourth trial and following that a fifth were necessary before Sedgwick was chosen May 11, by a majority of eight in a total vote of four thousand and ninety-five.⁷⁵ This finally completed the Massachusetts delegation, six of her representatives being Federal and two Antifederal.

In Virginia it was the part of political wisdom for the Antifederalists, who controlled the legislature, to divide the state into districts. In that way they were sure to elect a part of the state quota of ten members—and politically diplomatic, to say the least, was the districting they did. To the constitutional qualifications for representatives were added the further requirements that the candidate be a "discreet and proper person" who was a freeholder and had been a bona fide resident of his district for twelve months.⁷⁶ Within seven days after the election, which

⁷⁴ Hampshire Gazette, May 6, 1789.

⁷⁵ The towns were allowed two weeks in which to send in their returns. Owing to the negligence of returning officers, seventeen towns favorable to Lyman were unreturned at the last election. Had the vote in these towns been properly sent in, Lyman would have been elected. Massachusetts Centinel, May 30, 1789.

The vote for Sedgwick and Lyman at the different trials was as follows:

	Total vote.	Sedgwick.	Lyman.
December 18,	2201	801	330
January 29,	2513	716	717
March 2,	4731	1449	1557
March 30,	3328	1564	1309
May 11,	4095	2056	1958

Massachusetts Centinel, May 30, 1789, and previous numbers.

⁷⁶ Hening, XII. 653 et seq.

was to be held, February 2, 1789, the sheriffs in each district were to meet, canvass the vote and issue a certificate to the candidate standing highest.

The majority in the assembly⁷⁷ was well organized and well directed, ready to make the most of its advantage. Certain parts of the state were known to be strongly Federal, and other parts as strongly Antifederal. In districting, the latter party endeavored to group the counties so as to secure the greatest possible benefit to themselves, and several remarkable contests resulted.⁷⁸ In the eighth district, composed of the counties in the southeastern part of the state, Thomas Matthews, the principal Federal candidate, was opposed to Josiah Parker. The district was normally Federal, and in the election of members of the state convention Parker had been badly beaten.⁷⁹ But in the congressional election Matthews was handicapped by the appearance of other Federal candidates, and Parker managed to squeeze in.⁸⁰ The sixth and ninth districts, situated in the southern part of the State, the center of Antifederal strength, also elected party exponents, Isaac Coles and Theodoric Bland.

⁷⁷ See page 70.

⁷⁸ Rives' *Madison*, II. 654.

O. G. Libby, in his *Distribution of vote on the Federal Constitution*, p.34, shows that the state was divided politically into four sections. In the eastern counties eighty per cent of the vote had favored the Constitution; in the middle district seventy-four per cent opposed it; the West Virginia section stood ninety-seven per cent for, while the Kentucky district was ninety per cent against.

⁷⁹ R. A. Brock, *History of the Virginia Federal Convention of 1788*, II. 376. 2 Vols., Richmond, 1891.

⁸⁰ Before his election Parker was a naval officer at Norfolk, Virginia. He wrote to Governor Randolph, February 9, 1789, that he was probably elected but would not resign his office yet, as a disputed election might deprive him of the honor of taking his seat in Congress. He did send in his resignation a few days later, however. *Calendar of Virginia State Papers*, IV. 561, 566, 568.

The great contest in Virginia took place in the fifth or central district, where two future presidents, James Madison and James Monroe, were pitted against each other. Madison had originally intended to become a candidate for representative, but at the solicitation of friends had relinquished this desire and entered the senatorial race. The Virginia legislature, however, was too thoroughly opposed to the new government to allow itself to be represented by the state's chief exponent of the Constitution, and defeated him. Thus he was left free to pursue his original object, but the political enmity of the assembly still followed him. His district was made to consist of the counties of Amherst, Albemarle, Louisa, Culpeper, Spotsylvania, Goochland and Fluvanna, in addition to his home county of Orange.⁸¹ His friends in the assembly endeavored to include the Federal county of Fauquier, which both from geographical position and habitual intercourse fell naturally into association with Orange, and to exclude Amherst and Goochland, two remote southern counties which were strongly Antifederal, but the effort was vain.⁸² Writing to Jefferson of Henry's measures to defeat him for the Senate, Madison said: "He has taken equal pains in forming the Counties into districts for the election of Representatives to associate with Orange such as are most devoted to his politics, and most likely to be swayed by the prejudices excited against me."⁸³ The provision in regard to a candidate's residency within the district seemed also to be aimed at Madison. Many of his friends, believing the requirement unconstitutional, desired him to ignore

⁸¹ Of the eight counties in the district, five had given an undivided vote in the convention against the acceptance of the Constitution, one had divided its vote, and two only, including Orange, had given an undivided vote for ratification. Rives' Madison, II. 654, note.

⁸² Colonel Carrington to Madison, November 15, 1788. Rives' Madison, II. 654. Rives calls this the first case in which the device, later known by the name of gerrymandering, was put into operation.

⁸³ Writings of Madison, V. 313.

it and to appear as a candidate for an unquestionably Federal district, but he decided to stand in his home territory.

The Antifederal organization decided upon James Monroe as its candidate,⁸⁴ and the situation was simplified by the absence of any others from either party.⁸⁵ Both candidates spent the month of January electioneering—making public addresses, writing letters to friends and to the papers, and even appearing in joint debate.⁸⁶ The contest terminated with the election of Madison by a considerable majority. His home county gave him a practically unanimous vote, Culpeper, the critical county, over seventy per cent of its vote, and Spotsylvania, Monroe's home county, thirty-eight per cent.⁸⁷ In the other six districts of the state, the Federalists were also uniformly successful, even Kentucky returning a friend to the new government.⁸⁸

⁸⁴ Monroe to Jefferson, February 15, 1789. *Monroe's Writings*, I. 199.

⁸⁵ Madison to Washington, January 14, 1789. *Madison's Writings*, V. 319.

⁸⁶ Two letters from Madison defining his position on the question of amendments, appeared in the *Pennsylvania Packet* of February 10, 1789. *Rives*, II. 656 gives an account of an open air debate between the competitors on a bitter cold day, from which Madison retired with a frost-bitten ear.

⁸⁷ *Pennsylvania Packet*, February 17, 1789.

The writer has not seen the returns from the other counties. Monroe wrote to Jefferson that Madison's total majority was about 300. Both candidates testified that their personal relations were not affected by the political contest. *Monroe's Writings*, I. 199.

⁸⁸ That is, the Federalists elected seven representatives and their opponents three. This is the classification which Madison gave to Jefferson in a letter dated March 29, 1789. *Madison's Writings*, V. 334.

It is frequently difficult to determine the precise political standing of public men in 1788-1789 who never became very prominent. The brevity of the reports of congressional debates, the questions between North and South, and the early formation of the Republican party, all render attempts at classification confusing. The Federalism of R. B. Lee, from

Delaware, entitled to only one representative, could not be districted for the election, even though the tendency of the state was toward such a system.⁸⁹ The election act had one striking feature, evidently designed to prevent one county from controlling the situation. Each qualified person was to have two votes, one of which was to be cast for a candidate not an inhabitant of the county in which the voter lived. The man receiving the highest number of votes was to be declared elected.⁹⁰ As a result of this provision, each county gave a full vote to one of its own number, and divided up the vote which went to outside candidates.⁹¹ Whether this was spontaneous, or the result of pre-election political activity, can not be determined from the

the fourth Virginia district, is shown in letters written by him to Leven Powell. The John P. Branch Historical Papers of Randolph-Macon College, I. 219-223. Richmond, 1901—.

The situation of the several districts in the state, with the successful candidate in each, follows: First district, north-west part of Virginia, Alexander White; Second, Kentucky, John Brown; Third, south-west Virginia, A. Moore; Fourth, north-east section of state, R. B. Lee; Fifth, central and south central section, James Madison; Sixth, south section, east of third district, I. Coles; Seventh, north of York River to the Potomac River, John Page; Eighth, south-east section including the peninsula east of the Chesapeake Bay, J. Parker; Ninth, south section, next to the Sixth, T. Bland; Tenth, between the James and York Rivers, Samuel Griffin.

⁸⁹ This was shown in the choice of electors, for which the state was divided into three districts.

⁹⁰ Session Laws, October, 1788.

⁹¹ Thus the electors of Newcastle united on Gunning Bedford, Jr., an inhabitant of that county. For second choice they favored Allen McLane and John Vining, both of Kent county. The voters of Kent united on their fellow inhabitant, John Vining, and for second choice they divided between Bedford and Joshua Clayton of Newcastle county. The returns for those two counties are given in the *Pennsylvania Packet*, January 15, 1789. The writer has not seen the returns from Sussex.

too meager records. Party politics, considered as such, played little part in the election, for all the principal candidates were Federal. The important point for a voter to ascertain of his candidate was place of habitation rather than party politics. Kent county, though not having a much larger population than Newcastle or Sussex, was able to get out a greater proportion of its voters and so elected its resident, John Vining.

The two other states of the original thirteen, North Carolina and Rhode Island, did not ratify the Constitution in time to send representatives to the first session of the first Congress, but North Carolina was in part of the second session and both were in the third. The second convention of the latter state ratified the Constitution November 21, 1789. The assembly which met immediately afterwards passed an act directing the manner of electing representatives, by which the State was divided into five districts or "divisions," each formed by the union of two of the ten superior court districts.⁹² Each division was entitled to elect as its representative one of its inhabitants who must have resided within the division for the year just preceding. The election was to be held on the first Thursday and Friday in the following February (except in the western district, where it was to be a month later), and was to be conducted as were the annual elections of members of the general assembly. In case of a tie vote, the returning officers were to decide the election, or in the event of their failure, the decision was to be made by drawing lots as for the grand jury.

The election was held in accordance with this act, the successful candidates taking their seats in Congress in March and April. The divisions of the state with their successful candidates follow: the first or Roanoke division, formed by the superior court districts of Hillsborough and Halifax, returned J. B. Ashe, probably a Federalist; the second or Edenton division, formed by the districts of Edenton and Newbern, Hugh Wil-

⁹² Laws of North Carolina, December 22, 1789.

liamson, a strong Federalist; the third or Cape Fear division, formed by the districts of Wilmington and Fayetteville, Timothy Bloodworth, a strong Antifederalist; the fourth or Yadkin division, formed by the districts of Salisbury and Morgan, John Steele, a Federalist; the fifth or western division, formed by the districts of Washington and Mero (the Tennessee country), John Sevier, ex-governor of the state of Franklin.

Rhode Island ratified the Constitution May 29, 1790. At the session of the general assembly held immediately afterward an act was passed providing for the choice of the single Rhode Island representative by the freemen assembled in town meetings on the last Tuesday of the following August.⁹³ In case no person received a majority, a second election was provided, the candidates at which were limited to those persons standing highest in the first election, the whole number of whose votes made a majority of all the votes cast. If no one secured a majority of all the votes cast at the second election, a third was planned to try the strength of the two most popular candidates at the second. A rather bitter contest ensued, the two principal candidates being Job Comstock and Benjamin Bourne.⁹⁴ Comstock was advocated chiefly because he was opposed to the slave trade. A second reason for selecting him was that he was a Friend and it was urged that some one of that faith should hold office. The person elected was to serve only until the following March, and Comstock's friends demanded that his abilities be given a trial for that length of time.⁹⁵ The chief argument in Bourne's favor was that he was a successful lawyer. The vote in Providence gave Bourne a majority of two hundred and eighty, and

⁹³ Rhode Island, Session Laws, June, 1790.

⁹⁴ Of the two important newspapers in Providence the *Gazette and Country Journal* apparently favored Bourne, and the *United States Chronicle*, Comstock. Bourne had worked and voted for the adoption of the Constitution, while Comstock had voted against it in the state convention. Staples, *Rhode Island in the Continental Congress*, pp. 672-673.

⁹⁵ *United States Chronicle*, August 26, 1790.

though outside of that city he did not run so well, he was elected with a total majority of two hundred and thirty-nine.⁹⁶

Reviewing the provisions made by the thirteen states for this first election of representatives, the lack of uniformity is at once apparent. A rough division of five groups may be made. Four states, Pennsylvania, New Jersey, New Hampshire and Connecticut, adopted the general ticket system, but in nearly all other particulars their laws were different. Georgia and Maryland, while allowing the entire voting population to vote for the full congressional quota, required one representative to be chosen from each district. New York and South Carolina required just the reverse—the voters in each district choosing only one representative, who, however, might come from the state at large. Massachusetts, Virginia, and North Carolina, the fourth group adopted the district system, their laws varying in other respects. Delaware and Rhode Island, with their single representative, were untroubled by questions which disturbed other states, but enacted systems which had peculiarities of their own.

New Hampshire and Massachusetts required majorities to elect, while the other states only asked for pluralities. The time of elections varied in eleven different states from November 24, 1788, when South Carolina cast its ballot, to March 10, 1789, when New Jersey finished the election.⁹⁷ Only two states, Delaware and Maryland, elected on the same day and that was determined by the time for choosing presidential electors.

⁹⁶ Providence Journal, August 28, 1790. The detailed vote is not extant.

⁹⁷ The time of election of representatives in the different states was as follows:

South Carolina, November 24-25, 1788.

Pennsylvania, November 26, 1788.

New Hampshire, December 15, 1788.

Massachusetts, December 18, 1788.

Connecticut, December 22, 1788.

Delaware and Maryland, January 7, 1789.

Virginia, February 2, 1789.

Georgia, February 9, 1789.

New Jersey, February 11—March 10, 1789.

New York, March 3, 1789.

CHAPTER IV

PRESIDENTIAL ELECTORS

The Constitution was clear enough in saying that United States Senators should be chosen by the respective state legislatures, and that representatives should be chosen by the people. But a new and important question had reference to presidential electors. Should they be appointed by the legislature or elected by the general body of voters? If by the former, should it be by joint or concurrent ballot—a question also involved in the choice of senators. If by the latter, should it be by the district or by the general ticket system—an important question in the election of representatives. Congress had gone to its constitutional limit in fixing the time for the choice of electors, and the time for them to cast their votes.

A newspaper correspondent at Philadelphia, October 1, 1788, maintained that Congress had construed the Constitution to mean that the legislatures should make the appointment. "For if the people, as hath been asserted, are to choose the electors, is it possible that in the large states of Massachusetts, Virginia, etc., the returns can be made for the choice, notice given to the persons chosen, and the persons thus chosen have time to meet together in the short space of one month? No, it is impossible, and can only be remedied by the legislatures, who, in fact, are 'the States' making the choice."¹ This view was not shared uniformly throughout the Union, however, for the ten states which took part in the first presidential election were nearly evenly divided in actual practice. The two secondary questions, relating to a concurrent or joint ballot and to a general ticket or district sys-

¹ Edward Stanwood, *A history of the presidency*, p. 21. New York, 1904.

tem, were the excuse for elaborate constitutional debates in the various state assemblies, but were really decided by such other considerations as state politics, election habits or compromises over the relative importance of the upper and lower houses of assembly. These two questions will be further discussed in connection with state cases coming under them.

The first state to enact the necessary laws was Pennsylvania. The twelfth general assembly of that state met in its third session September 2, 1788. On September 17 the action of Congress of the thirteenth was officially received, and the following day it was referred to a special committee with instructions to draft a bill if necessary.² On the twenty-third a bill was reported providing for the election of both United States representatives and presidential electors on the first Wednesday in January, 1789. One section of this bill specified that every qualified voter was to write the names of ten persons to serve as electors, upon a slip of paper. The ten receiving the highest number of votes were to assemble at Reading on the first Wednesday in February and cast their ballots for president and vice-president. When the bill came up for discussion the following day, attention was confined almost exclusively to the provisions in regard to representatives.³ It seemed to be taken for granted that the choice of electors lay with the people. One speaker, indeed, declared that while the Constitution left the appointment of electors to the legislature or to the people, according as the former directed, yet in such a case the legislature ought not, in delicacy, to decide in its own favor. On the question of district versus general ticket elections, a long debate took place. But when the decision to elect representatives rested with the advocates of the general ticket system it was taken for granted that the choice of electors should be by the same plan. The editor of the Pennsylvania Packet wrote that when it was once decided to allow

² Minutes of the Assembly of Pennsylvania.

³ Lloyd's Debates.

the people at large to choose electors, a new argument was furnished for the general ticket system. "For were we to go into district elections we must have ten districts for electors of presidents, and eight for the Federal representatives, which would oblige us to hold the elections on different days, at the expense of double cost and time, and with a repetition of the confusion that attends an election."⁴ As a matter of fact, however, just before the passage of the bill on September 29, it was decided to hold the elections on separate days; for representatives on the fourth Wednesday in November, for electors on the first Wednesday in January. The bill was finally enacted October 4.

A method similar to the one just described in that the choice was left to the people, but different in that the district system prevailed, was followed in Delaware. That diminutive state had no excuse for the appointment of electors by the legislature, especially since that body had met in October, leaving ample time to make arrangements for a popular election. It was entitled to appoint three electors. Being already practically divided into three districts (as the state consisted of three counties) it was naturally suggested that each be allowed one elector. It was therefore enacted that an elector be chosen by the qualified voters of each county, such person to be an inhabitant of the county from which he was chosen.⁵

Maryland, although providing for popular choice of electors, differed in the details of her arrangements from both Pennsylvania and Delaware. Section VI of her act for carrying the government into operation provided ⁶ that every qualified person

⁴ Pennsylvania Packet, September 27, 1788.

⁵ Session Laws of Delaware, October, 1788.

⁶ "An Act directing the time, places and manner of holding elections" etc. Session Laws, December 22, 1788.

Stanwood (on page 22) and Dougherty (page 282) are both mistaken in saying that the Delaware legislature chose the first electors in Delaware.

vote for eight electors, five from the western and three from the eastern shore. The five on the western shore and the three on the eastern having the greatest number of votes were to be declared elected. This was nothing less than dividing the state into two great districts and prescribing the number of electors from each, but allowing the whole body of voters to cast their ballots for the full number.

Of all the ten states, Virginia, it would seem, had the most reason for appointing electors by the legislature. The majority in that body was Antifederal and could have chosen men of its own political views, whereas a popular election might result otherwise, for it was well known that the state was much more Federal than the legislature.⁷ And should the popular election be held by the district system, several if not a majority of Federal electors were sure to be returned. Again, if the counties lying far beyond the mountains had to hold their elections on the first Wednesday in January and send the returns to Richmond, how could electors of these frontier districts receive official notification in time to meet the other electors at some eastern point by the first Wednesday in February? In the face of these practical as well as political arguments, however, the choice of electors was left to the people,⁸ and more than that, a complete district system was put into operation. As the state was entitled to twelve electors, it was therefore divided into that many districts.⁹ Persons who were qualified to vote for assemblymen were allowed the suffrage at this election. The elector was to be "a

⁷ Maryland Journal, December 12, 1788.

⁸ Probably one reason why the election was referred to the people was because the legislature would not have been in regular session on January 7.

⁹ Each of these districts was composed of two senatorial districts. "This mode, although unequal and unjust, was adopted on account of the shortness of time for promulgating the law." Maryland Journal, November 28, 1788.

discreet and proper person, being a free-holder and *bona fide* resident in such district for twelve months."¹⁰

The provisions for the appointment of electors thus far described left the choice simply and solely to the people. The alternative, or what was generally considered as such, was for the legislature to make the appointment. But two states, New Hampshire and Massachusetts, put into operation an intermediate system by which the legislature shared the privilege of appointment with the people. The general court of New Hampshire, by an act of November 12, 1788, provided for the election of both representatives and electors on the third Monday in December. The persons qualified to vote for the former, were to bring in also their ballots for five electors, the full number to which the state was entitled. Electors were to be inhabitants of the state who were not continental senators, representatives or persons holding offices of trust or profit under the United States. The votes were to be returned to the general court which was to be in session at the beginning of January, and the persons having a majority were on the first Wednesday in January to be duly declared elected. In case five persons or less should not be chosen by a majority, then the general court was to choose from double that number of candidates having the highest number of votes, as many as might be lacking.¹¹ Had the election resulted in five

¹⁰ "An act for the appointment of electors to choose a President, pursuant to the constitution of government for the United States," passed November 17, 1788. Hening, XII. 648.

"Each elector chosen pursuant to this act, and failing to attend and vote for a president at the time and place herein directed, and moreover to send and certify the same in manner directed by the constitution of government, shall, except in cases of sickness or any other unavoidable accidents, forfeit and pay two hundred pounds, to be recovered by the solicitor general, to the use of the commonwealth, by action of debt, bill, plaint or information, in any court of record." Hening, XII. 651.

¹¹ "And in case it shall so happen, that the whole, or any part of the number of electors, are not chosen by the people, then the general court shall take a number of names out of the candidates who have the highest number of votes, equal to double the number of electors wanting, from which the senate and house shall, *in such way and manner as may be by them agreed on*, proceed to appoint the electors wanting."

persons receiving a majority, the legislature obviously would have had nothing to do but canvass the returns and declare the result—barely enough to meet the requirement that the appointment be made on the first Wednesday in January. But, as will be seen, no elector received a majority and it became the duty of the general court to choose the full list.

In Massachusetts the subject of electors was closely connected with that of representatives. For the election of the latter the state was divided into eight districts, each to choose one representative on December 18, 1788.¹² On the same day each district was to choose also two persons, inhabitants of the district, to be candidates for electors. From the two persons receiving the highest number of votes in each district, the general court in joint session on the first Wednesday in January, was to appoint one. In addition to the eight thus chosen, the general court was to appoint two electors at large.

Thus Massachusetts put into operation a district system while New Hampshire had a general ticket system. Further, it was not meant in Massachusetts that the system should be anything more nor less than a nomination by the voters, while the system in New Hampshire provided an actual election, subject to the condition that the persons so elected secure a majority. Finally, definite provision was made in Massachusetts that the action of the general court on the first Wednesday in January should be in joint session of the two houses, while the New Hampshire law made no provision on this point—an omission productive of trouble later.¹³

¹² Resolve for organizing the federal government, November 20, 1788.

¹³ According to the N. H. constitution of 1784, the delegates to Congress were to be elected by the senate and house "in their separate branches." The president of the state was elected by popular vote, but if no person received a majority, the house was to elect two persons, out of the four highest, and the senate one from these two. The council (two members from the senate and three from the house), as well as the secretary, treasurer and commissary general, was to be chosen annually by joint ballot.

In three of the remaining four states, the appointment of electors was made by the legislature. Two, Georgia, and Connecticut, made no previous provisions by law for the appointment, but South Carolina, in the same act prescribing the manner of choosing representatives¹⁴ provided that electors should be chosen by the legislature on the first Wednesday in January. In the fourth state, New Jersey, it was arranged¹⁵ that the governor and council meet at Princeton on the required day, and choose six persons to be electors, "being freeholders and residents in the State."¹⁶

New York had ratified the Constitution, but owing to a deadlock between the upper and lower houses did not provide for the appointment of electors and so had nothing to do with Washington's first election. The legislature of that state met ordinarily in January, but the importance of giving prompt attention to the necessary arrangements for starting the new government caused it to be convened early in December, 1788. The senate in its address to the governor declared that the appointment of electors was a matter of such magnitude that, if sufficient time had intervened for a general election, it would rather

¹⁴ Passed November 4, 1788.

¹⁵ An Act for carrying into effect the Constitution of the United States, November 21, 1788.

¹⁶ Stanwood, in his *History of the Presidency*, page 22, says that for this first election, the governors of five states, Connecticut, New Jersey, Delaware, South Carolina and Georgia, did not summon the legislature in time to provide for an election by the people. He is mistaken, however, for Delaware did hold a popular election for electors, while the legislatures of Connecticut, New Jersey and South Carolina were holding sessions in October and November of 1788 and could have provided for popular elections as well as Virginia and the other states.

Dougherty, in his *Electoral system of the United States*, page 282, falls into the same error. Stanwood's statement might possibly apply to Georgia, but certainly not to the other states.

have referred the choice to the suffrage of the people. To which the governor answered: "I regret that the legislature could not have been convened at so early a period as to have afforded time to have made and carried into effect the arrangements necessary for appointing electors in the manner which, it seems, you would have preferred. But, since this was impracticable, you will, I am persuaded, perceive the propriety of pursuing your principle, as far as circumstances will permit, and of adopting such mode of appointment *as shall appear most nearly to approach an election by the people.*"¹⁷ It was thus understood at once that the choice was not to be referred to the people. By the last sentence of his message Governor Clinton apparently meant that the house of assembly, as it stood nearer to the people, should have more influence in appointing electors than the senate. This brought into prominence the respective politics of the two houses. A large Antifederal majority (Governor Clinton's party) controlled the assembly; the senate had a small Federal majority. If the appointment were made by joint ballot, eight Antifederal electors would be chosen, if by concurrent vote, probably four Federalists and four Antifederalists.¹⁸ This was the situation which produced a struggle attracting attention throughout the Union.

The senate took first action by passing a bill on December 18, which provided that each house choose four electors.¹⁹ On the twenty-second the assembly rejected the senate bill without debate, but passed instead a sort of omnibus bill of its own, providing for the choice not only of electors, but also of senators and representatives. Senators and electors were to be chosen as were the New York members of the Continental Congress,²⁰

¹⁷ Massachusetts Centinel, January 14, 1789.

¹⁸ Dougherty, in his Electoral system of the United States, page 20, is mistaken in saying that New York was entitled to ten electors.

¹⁹ Pennsylvania Packet, December 25, 1788, et seq.

²⁰ Section 30 of the state constitution.

—each house was to nominate separately the number of persons needed, and if, on comparing the lists, the same men were named by both houses, they were to be declared elected. In case no electors were thus concurrently named, the election was to proceed by joint ballot, the office going to the persons receiving the highest number of votes. The senate passed this bill, but amended it so as to secure the appointment of senators and electors by concurrent rather than joint vote. The assembly disagreed with the amendments, and on January 5, 1789, in accordance with provisions governing such cases, the two houses met in "conference" to discuss the senate amendment.²¹ But neither house would recede from its position and the bill was lost.

Several days later another bill was introduced into the lower house and passed that body January 27, twenty days after the choice of electors should have been made, according to the resolves of Congress. It seemed that the assembly majority still hoped the state would take part in the first election.²² The mode of appointment provided in the new bill was exactly similar to that which had been rejected after the conference of January 5, and the fate of the bill was the same. It was amended by the senate, a conference was held, neither side would recede, and the bill was lost.

On February 4, the day fixed by Congress as the time for electors to meet and vote, Mr. B. Livingston, in the assembly, moved that electors be chosen by concurrent resolution. The

²¹ See the chapter on the election of senators where these arguments are given in detail.

²² Alexander Hamilton to Sedgwick, January 29, 1789. Hamilton's Works, IX. 456. Speaking of the day for the appointment of electors having gone by with no action on the part of the assembly, he said: "I am not sorry, as the most we could hope would be to balance accounts and do no harm. The antifederalists incline to an appointment notwithstanding, but I discourage it with the federalists."

joint ballot plan was promptly substituted by the usual majority, and the whole resolution as promptly rejected by the senate. The upper house then sent to the lower the proposition that each body choose four persons to serve as electors, but it met with the usual rejection. As a last effort, Mr. Watts, in the assembly, introduced a resolution that a committee to consist of five members from each house, be appointed to select eight proper persons to be approved as electors by the two houses. This last proposition was lost by a strict party vote.²³ If any one of the attempts which were made after January 7 to appoint electors in New York had been successful, it would surely not have been regarded as legal. Just what action Congress would have taken when the electoral vote came to be counted under these circumstances it would be interesting to know. But at that particular crisis, it was probably fortunate that it did not become necessary to throw out the whole electoral vote of a large state.

Turning from this diversity of legislation to the political conditions preceding the actual election of January 7, 1789, a rather chaotic situation discloses itself. Politics as well as government was in a transitional stage. The struggle of the past year over the adoption of the Constitution had drawn a sharp line between its supporters and opponents, but with the victory of the former new questions were coming up to cause a different political alignment. For the ensuing year, three parties were rather vaguely outlined, namely, the supporters of the Constitution as it stood, the advocates of a new convention to amend or recast the Constitution, and the advocates of amendments to be proposed by Congress. The last party, indeed, was a compromise party made up in part of former opponents to the Constitution, such as Edmund Randolph, and in part of former supporters forced into an advanced position to carry the election, as was the case of Madison. It was the program of the radical party to secure control of the government in the fall and winter

²³ Pennsylvania Packet, February 16, 1789.

elections and to force Congress into calling a new convention. It was even rumored that, contrary to the generally expressed desire of making Washington president, the Antifederalists of the three large states of New York, Pennsylvania and Virginia would support Patrick Henry for chief executive and Governor Clinton for vice-president. Such reports called forth warm expostulations²⁴ and brought on sharp party conflicts at various places.

The actual result of the election showed that the danger was not so great as the Federalists had feared. New York, a stronghold of the opposition, as we have seen, because of the quarrel in the legislature took no part in the presidential election. Of the ratifying states, Virginia would probably have appointed the electors most to be feared by the friends of the new government had the appointment been made by the legislature. But with the choice by popular election, the Federalists had more than an even chance, and after an active canvass elected nine of the twelve electors, Patrick Henry being one of the three successful Antifederalists. According to Madison, the sole object of the election, in the eyes of the mass of the people, was the choice of a president, little attention being paid to the second office.²⁵ Thus in Amherst county, Colonel Cabell, the Antifederalist candidate, received a unanimous vote simply because he had made a previous declaration which satisfied the Federal party as to the disposition of his vote for president. That the district of which Amherst was a part gave a small majority to General Stevens, the Federal candidate, was due solely to a similar coalition in another county.²⁶

In Pennsylvania, where the general ticket system had been adopted, two complete electoral tickets were put forth, one by the Federal convention at Lancaster, November 3, and the other

²⁴ *New Jersey Journal*, January 14, 1789.

²⁵ Madison to Washington, January 14, 1789. *Writings of Madison* V. 318.

²⁶ *Ibid.*

as a result probably of the Antifederal convention in Harrisburg September 3.²⁷ The election of representatives came several weeks earlier than that for electors, unfortunately for the latter, for one result was a perceptible decrease in interest and a considerably smaller vote. From Fayette county, for instance, came the disheartening news, "no election has been held in this county for the election of electors. The number of persons who attended on that day was not sufficient to have filled the necessary offices of such an election."²⁸ A writer in the *Pennsylvania Packet*²⁹ complained bitterly of the laxity of the returning officers, and asked if Pennsylvania, like New York, was to look on as a silent spectator, and be made the scoff of the Union because a few Antifederal county officers trampled with impunity upon the laws. The Supreme Executive Council had taken steps to prevent such a defeat of the law by employing two express riders to bring the returns from the ten counties situated furthest away.³⁰ Even then it was not until Tuesday, February 3, that the returns from the several counties were inspected by the Council, and the names of the ten successful persons were proclaimed.³¹ These men had all been elected from the Federal ticket.³²

In Maryland the election of representatives and electors came on the same day, with the chief interest centering in the

²⁷ For a description of these conventions, see J. S. Walton, *Nominating conventions in Pennsylvania*, *American Historical Review*, II. 262 et seq.

²⁸ *Pennsylvania Archives*, XI. 535.

²⁹ February 2, 1789.

³⁰ *Colonial Records*, XV. 633, 634, 637. *Pennsylvania Archives*, XI. 430.

³¹ *Colonial Records*, XV. 655.

³² *Pennsylvania Packet*, January, 1789. For the election of January 7, only the vote cast for the Federal candidates was seen by the writer, but this was much smaller than the corresponding Federal vote for representatives in the previous November. It is probable that the Antifederalists were discouraged by the result of the first election, and cast even a comparatively smaller vote than the Federalists at the election of January 7.

former. Both parties had put forth complete electoral tickets. That of the Federalists was formed in the latter part of December by a legislative caucus;³³ that of their opponents was announced as the work of a number of gentlemen, "zealous guardians of the rights of the people."³⁴ Two of the Federal candidates were included in the Antifederal ticket, placed there, the Federalists charged, "in the hope that their deserved popularity in their several counties, would draw to them the votes which would otherwise be given to members of the federal ticket, by which means they expect to divide the federal interest and thereby increase the chances in favor of the antifederalists."³⁵ The returns from the election came in rapidly and showed that the entire Federal ticket was elected by majorities ranging from two thousand to five thousand.³⁶

From the little available material on the political conditions in Delaware it seems that both campaign and election passed off very quietly, with little or no contest. Indeed, in Kent county, John Banning was chosen elector by a unanimous vote, and in Newcastle, the vote for G. Bedford was practically so.³⁷

Turning to Massachusetts, with its system of district nomination by popular vote, one finds no evidence of any active canvass in behalf of electoral candidates. As in Maryland, the election of representatives was absorbing all the attention. Moreover, there was no extra-legal machinery by which the number of candidates could be reduced, and this made the striking feature of the election, as compared with the middle states, the large number of persons who received votes. This is well illustrated by a

³³ See page 47.

³⁴ *Maryland Journal*, December 26, 1788.

³⁵ *Maryland Journal*, December 30, 1788.

³⁶ *Ibid.*, January 23, 1789.

³⁷ *Pennsylvania Packet*, January 15, 1789.

The writer was unable to discover any complete files of Delaware newspapers for this period.

news item from Worcester, in which it was said, "We learn that the inhabitants of this county were so well united in the choice of electors of president and vice-president of the United States that there were *only* between forty and fifty candidates voted for. *"Behold how good and how pleasant it is for brethren to dwell together in unity."*³⁸ From these large lists the names of the two persons standing highest in each district were returned to the general court, and on January 7, in accordance with the previous arrangements, the two houses met in joint session and appointed one elector from each district and two electors at large.³⁹ It is needless to say that all were Federal.

In New Hampshire, as in Massachusetts, the vote was scattering, and as no one person received a majority, the election of the complete list devolved upon the legislature.⁴⁰ But sufficient provision had not been made for such a contingency. Just as the legislature was ready to proceed to the election on January 7, the question suddenly arose as to whether it should be done in joint session or by concurrent vote, and a disagreement followed which lasted almost until midnight. From all accounts,

³⁸ Ibid., February 7, 1789.

³⁹ Pennsylvania Packet, January 20, 22, 1789.

The resolve for putting the general government into operation had provided that the general court appoint two electors at large "not voted for by the several districts." But it was found that over 200 persons had received votes in the district nominations, and the legislature felt so restricted that it passed a resolve on January 6, that any citizen of the state not appointed an elector from one of the districts, and not otherwise disqualified should be considered as eligible for an elector at large.

⁴⁰ The total vote cast was 20142. State records of New Hampshire, XXI. 258.

As each voter was authorized to vote for five persons, there were evidently 4029 persons who voted, and the necessary majority would be 2015. General Bellows, who received the highest popular vote, fell short of the necessary majority by over 250 votes, 1759 being given him.

contrary to the New York situation, no political question seems to have been involved. It was a disagreement on purely constitutional grounds, a question of rights and privileges as between the two houses. The senate insisted that the appointment was a legislative action, and that the upper house had its constitutional right of a negative upon the action of the lower. The latter replied with equal insistence that the senate had no right to control the choice of the house, and that the appointment should be effected by joint ballot. "The contest terminated in the lower branch's acceding to the proposal of the upper, and the choice was happily effected—the house 'at the same time solemnly protesting against the said mode of choice, and declaring that in the opinion of this house, the present mode of appointing electors ought not to be considered as establishing a precedent, or drawn into example, or insisted upon as a rule, in any future appointment of electors.' What rendered the above circumstance more delicate, and greatly heightened the anxiety of the spectators, was the knowledge that if a compromise did not take place before the close of the day, New Hampshire would lose the honor of giving her suffrages for a president of the United States."⁴¹ It is worthy of remark that though the legislature could have chosen any five from the ten persons who had received the greatest number of votes in the popular election, it disregarded this prerogative and simply named the five who stood highest.

For the other four states which appointed electors, the records are very meager and show little of interest. The Connecticut general assembly, on the specified day,⁴² appointed the full list—all being Federalists. The governor and council of New Jersey, by proclamation dated January 7, named the six electors for that State⁴³ The Georgia legislature consisted of

⁴¹Freeman's Journal, February 4, 1789.

⁴²Pennsylvania Packet, January 23, 27, 1789.

⁴³New Jersey Journal and Political Intelligencer, January 14, 1789.

but one house, and the appointment was a simple matter.⁴⁴ The legislature of South Carolina⁴⁵ had been summoned to meet on January 5, but it was January 7 before a quorum of the house was present, and January 12 before a quorum of the senate appeared. On Wednesday, January 7, however, all of the senators present (being ten) met with the house and the electors were chosen by joint ballot.⁴⁶ Although done without a quorum of the senate, the election was legal and in accordance with the act of the previous November. The fourth section of that act declared that the appointment should be by such members of the legislature as should attend on the first Wednesday in January.

Notices of the appointment of electors in the different states had not ceased appearing in the newspapers before accounts of the casting of electoral votes on February 4 began to come in. It was reported that the Massachusetts electors proceeded to business "without a single debate on the subject,"⁴⁷ and the same comment would probably apply to the proceedings in the nine other states. Only ten of the twelve Virginia electors voted,⁴⁸ and of the eight for Maryland, only six voted. In the latter state, it was explained, "Mr. Plater was confined by the gout, and Mr. Richard prevented from attending by the ice in the river and bay."⁴⁹ The Pennsylvania electors, after going

⁴⁴ Pennsylvania Packet, February 23, 1789.

⁴⁵ November 4, 1788. "And be it further enacted by the authority aforesaid, That Electors of a President of the U. S. shall be appointed by the legislature of this state on the first Wednesday in January next, or by such persons as shall be returned members thereof, and shall attend on that day"

⁴⁶ Independent Gazetteer, February 16, 1789.

⁴⁷ Pennsylvania Packet, February 16, 1789.

⁴⁸ Ibid. The two who did not vote were Samuel Kello from the southeastern part of the state, and Warner Lewis from the eastern part of the state. No explanation of their absence has been seen.

⁴⁹ Ibid., February 21, 1789.

through the routine of casting their ballots, repaired to the Federal Inn, where, it was reported, they dined with great hilarity.⁵⁰ In nearly every case the result of the ballot was soon made known. Thus from Georgia came the news that after the ballots were counted "the electors politely acknowledged that General Washington had the unanimous vote of the state."⁵¹

Summing up the provisions made by the several states for the appointment of electors in 1788-1789, it is found that in four states the choice was made entirely by the qualified voters, in three by the legislatures, in two by the voters indirectly, and in one by the governor and council.⁵² A classification politically of the seventy-three electors chosen by the ten states which participated in the election is impossible to make, but it can at least be said that probably seventy were "friends of the Constitution." The list of persons for whom votes were cast for the vice-presidency shows only one avowed Antifederalist, George Clinton, of New York, who received the vote of the three Antifederalists elected in Virginia.

⁵⁰ *Ibid.*, February 7, 1789.

⁵¹ *Ibid.*, March 17, 1789.

⁵² Dougherty, in his *Electoral system of the United States*, page 303, gives an interesting though slightly inaccurate table, showing the lack of uniformity and the frequent changes in the modes of appointment of electors in the various states prior to 1832.

CHAPTER V

ADJUSTMENT OF VARIOUS FEDERAL AND STATE RELATIONS IN 1789

Immediately after the organization of the new Federal government a general constitutional and legal re-adjustment took place throughout the Union. The rather unstable equilibrium in the relations between state and national governments, prevailing under the Articles of Confederation, had been swept away by the Constitution, which clashed with, and rendered obsolete many of the provisions of the state constitutions and laws. For this reason the effort to bring state and nation into proper relations again often took the form of a movement to re-codify the whole system of state laws, or to substitute new and revised state constitutions.

Some states were loath to admit, however, that the new order did render obsolete conflicting state provisions. In some quarters it was rather regarded as an act of grace for the legislature to revise its laws so as not to "interfere" with the execution of federal statutes. Proposed revisions encountered legislative opposition, an opposition which hindered and in some cases entirely prevented any thing like a thorough overhauling of state laws and constitutions. In these cases the friends of revision were fortunate if they obtained amendment or repeal of only certain specific acts plainly incompatible with federal enactments.

Of such conflicting nature were the state revenue laws. Previous to the adoption of the Federal Constitution, each state had established its own commercial system, levying import duties and enforcing shipping regulations. Each pursued its own policy, regardless of the effect upon neighboring states, and the result, bewildering to foreign importers, and ruinous to the prosperity of the country, was a medley of contradictory laws.

Of the thirteen states, Delaware and New Jersey were the only two which allowed free trade. The former had not levied any duties at all since the separation from England, while the latter had abolished her system by act of June 11, 1783.¹ All the other eleven states had enacted tariff laws varying from low revenue to high protective systems. Thus the Massachusetts act of November, 1786, was "to raise a public revenue by impost;"² the Virginia act of October, 1782, "for establishing a permanent revenue;"³ the North Carolina act of November, 1784, "in aid of public finances."⁴ On the other hand, the preamble to the New Hampshire act of March, 1786, declared that it was meant not only to produce a revenue but to encourage manufacturing as well,⁵ while the Pennsylvania act of September 20, 1785, was passed as a protective measure pure and simple.⁶ It recognized that goods might be imported more cheaply than manufactured in Pennsylvania, but this it declared was poor policy, fatal to home industries.

In retaliation for the royal proclamation of July 2, 1783, confining the West Indian trade to British shipping, several of the states adopted a special discriminating schedule against Great Britain. Maryland levied a duty of two per cent ad valorem, over

¹New Jersey Session Laws, 1783, Ch. 27. This was the act authorizing on the part of New Jersey the revenue amendment to the Articles of Confederation, proposed by Congress April 12, 1783. It recited that it was not to go into effect until all the other states in the Union had passed a similar measure, and enacted "that in the meantime all the Ports in this State be, and they are hereby declared free and open for the Importation and Exportation of any Goods, Wares and Merchandise whatsoever, clear of all Duties, Customs or Impositions, of any Species or Denomination."

²Laws and Resolves of Massachusetts, November 17, 1786.

³Hening, XI. 112.

⁴Laws of North Carolina, 1779-1788, p. 549.

⁵Session Laws of New Hampshire.

⁶Session Laws of Pennsylvania.

and above all other specific and ad valorem duties, on goods imported by British subjects,⁷ while Rhode Island levied a duty of seven and one-half per cent ad valorem above the ordinary rates on such importations.⁸ In South Carolina, where specific duties were levied in most cases, the schedule for British importers was from one-third to two-thirds higher than the schedule for other foreign importers.⁹

In a number of cases the express provision was made that the duties levied were not to apply to goods or merchandise produced by the sister states, but in other cases two schedules were adopted, one applying to foreign the other to domestic shipping. Rhode Island offered a reciprocity plan to her neighbors. By act of June, 1783,¹⁰ she levied a two per cent ad valorem duty on all goods imported from foreign countries. But if imported by citizens of other states into their native state, and then re-shipped to Rhode Island, such goods were to be exempt from the impost, provided a duty of two per cent had been paid in the other state upon arrival from the foreign country, and provided the other state gave reciprocal privileges to citizens of Rhode Island. The schedules of the different states in nearly every case included a number of articles upon which specific duties were levied, with an ad valorem duty upon all remaining imports. Massachusetts, the exception, had adopted a pure ad valorem system.

In addition to the duties on imports eight of the states had placed in operation previous to 1788 some system of tonnage duties, varying from four pence to six shillings per ton. Discrimination was usually made in favor of American bottoms, though Georgia levied a flat rate of two shillings per ton, in ad-

⁷ Session Laws of Maryland, 1783, 1784.

⁸ Session Laws of Rhode Island, May, 1785.

⁹ Statutes of South Carolina, Act of March 27, 1787.

¹⁰ Session Laws of Rhode Island, 1783.

dition to one shilling per ton for the support of a seamen's hospital.¹¹

It seemed to have been well understood in the autumn of 1788 that all of these state laws must soon come to an end, but it was a debated question whether such laws should be specifically repealed by the legislatures, or whether they should be allowed simply to be superseded by the action of the new government. If the latter, would they cease to be operative on the fourth of March, or would they continue in force until a new general impost system went into operation? According to the Constitution, Congress was to have power to levy duties and imposts, though it could not tax exports; on the other hand the states were forbidden, without consent of Congress, to lay any duties on imports, except those absolutely necessary for the execution of the inspection laws, or to levy any tonnage duties. This apparently bore out the contention that the state impost laws would come to an end, unless previously repealed by the legislatures, on the fourth of the following March. "A kind of interregnum," wrote a newspaper correspondent who accepted this interpretation, "will take place on the first Wednesday in March, with respect to duties on imports; as on that day the power of an individual state to collect such duties, 'except what may be absolutely necessary for executing its inspection laws,' will cease; and it must require some time for Congress, after having made the arrangements necessary for proceeding to business, to form and put in execution a system of revenue. This will be rather an unfavorable circumstance for public credit; but individuals, who may be so fortunate as to make importations during that interval of *free trade*, will no doubt make a considerable saving by it."¹²

¹¹ Act of February 1, 1789.

¹² Independent Gazetteer, February 27, 1789. Similarly a writer in the Virginia Independent Chronicle, December 24, 1788, on the subject of the public debt of Virginia, took it for granted that the impost of the state would cease after March 4, 1789.

The same view was taken by the Pennsylvania Assembly committee of ways and means. Estimating the revenues and expenditures for the year 1789, it reported, "as the government of the United States have, by their Constitution, the exclusive right of levying imposts, of course that part of the revenue of Pennsylvania will immediately cease."¹³ The impost had produced in 1788 £52,000, which, added to £3,200 produced by the duty on foreign and domestic tonnage made a reduction of the revenue to the amount of £55,200 for the year 1789.

In Virginia the opinion was expressed in the summer of 1788 that the state impost laws had been annulled the moment the Constitution was ratified. Several prominent and influential shippers of Accomac County, alleged Antifederalists, insisted that so much of the law as required vessels trading between the states to pay duties was totally abrogated by the new Constitution, and threats were made against any officer who should attempt to enforce that provision of the state act. In this dilemma, a naval officer wrote to George Corbin, the Attorney-General of the state, asking specifically whether or not the new Constitution annulled the provision of the state law in question. Corbin replied as specifically: "I am of opinion it does, being now the supreme Law of the Land."¹⁴ In the face of this opinion the naval officer could not enforce the law but at once appealed from the decision of Corbin to Governor Randolph. The latter turned the question over to the general assembly, which met soon afterward. It apparently decided that the state law would be in force until the following March. Its general attitude is indicated in a letter written by Monroe to Madison, November 22, 1788. "It is generally agreed," he said, "to make no other alteration in the revenue system than by such change in the appropriation as will supply the defect of the impost wh. will belong to the U. S. after March. Whether the impost system of the state shall cease then, or con-

¹³ Minutes of the Assembly of Pennsylvania, February 17, 1789.

¹⁴ Calendar of Virginia State Papers, IV. 470, 500.

tinue until contrary provisions are made, seems to be a doubtful question. An apprehension that other states may lay theirs aside and open their ports free from duty in the interval, has weight on the minds of some and disposes them for a similar measure, especially as they suppose the amt. will belong to the U. S., but I rather believe ours will be continued until Congress directs otherwise, let the revenue accrue to whom it may."¹⁵ Before the assembly adjourned it passed "An Act concerning certain public establishments,"¹⁶ the first article of which recited that the operation of the government of the United States would render unnecessary several public establishments which existed under the laws of the state. Therefore it was provided "that so soon as it shall be notified to the executive by Congress, that measures have been by them taken concerning duties or imposts, all laws concerning naval officers, collectors of duties and searchers, and their salaries, and concerning duties and imposts of every denomination whatsoever, shall cease and determine; except the duty of six shillings per hogshead on tobacco exported, reserved for inspection duties." Upon receiving notification of such action by Congress, the Governor was to announce it by proclamation, the revenue officers were to balance and close their accounts, and the revenue cutters were to be discontinued and sold.

The thing of which the Virginia assemblymen were apprehensive, according to Monroe's letter, actually occurred in Connecticut. In January, 1789, the general assembly of that state passed an act by which all laws, "so far as they relate to the levying and collecting a Duty on Articles imported into this State, by Land or Water, shall from and after the first Day of February next, as relative to Articles thereafter imported, cease and determine."¹⁷ Evidently then, Connecticut had free trade

¹⁵ Writings of Monroe, I. 197.

¹⁶ Hening, XII. 779.

¹⁷ Acts and Laws of Connecticut, p. 377.

from the first of February, 1789, to the time in August when the national tariff law went into effect.

The Georgia assembly apparently took the ground that revenues arising under state laws accrued to the state as long as the law was in force, and that it required special action of the legislature to repeal such laws. By section three of an act of February 1, 1789, amendatory of a previous revenue law, it was provided: "This act shall be in force and virtue immediately from the passing of the same until the United States in Congress assembled shall by their act order otherwise, and no longer."¹⁸

While the Pennsylvania assembly did not specifically repeal the state impost laws, it was recognized, in an act of March 27, 1789, relative to the monetary engagements of the state, that an act of Congress would soon displace the state law.¹⁹ The report of the committee of ways and means of the previous February 17, that the revenue arising from the state impost would immediately cease (see above), was known by this time to have been partially incorrect, for such revenue was still coming into the treasury of that state.

Massachusetts was the last state to pass any repealing provisions before the Federal statute went into effect. Late in June the general court enacted that the state impost law should be annulled at the time the act or law that should be made by Congress, for the purpose of raising a public revenue by impost, should begin to operate.²⁰ But in order to prevent any misunderstanding, a resolve was passed to continue in office the impost collectors until further orders.²¹

At the time of the passage of this Massachusetts repealing act, Congress had almost completed the formation of a general

¹⁸ Iredell's *Laws of Georgia*, p. 383.

¹⁹ *Session Laws of Pennsylvania*.

²⁰ *Laws and Resolves of Massachusetts, 1788-1789*, p. 415. Act of June 25, 1789.

²¹ *Massachusetts Centinel*, June 27, 1789.

tariff system for the new government. The creation and execution of a scheme for producing a sufficient national revenue had invoked the earliest attention of the national Legislature, and as soon as the organization of the two houses was completed, this important subject was submitted to the consideration of the House of Representatives.²² On April 8, in Committee of the Whole on the State of the Union, Madison introduced the subject by proposing that, in order to supply immediate financial needs, the recommendations by Congress in 1783 for establishing a national revenue be taken as the basis of a temporary system, leaving a permanent system to be worked out later. This did not meet the approval of the majority of the members of Congress, and after a delay of nearly four months a fairly complete and permanent system, consisting of three separate measures, was evolved.²³

The last thing necessary to be done before this series of revenue laws could go into operation was the appointment of the various revenue officials to enforce the tariff regulations and make the actual collections at the ports. An army of office-seekers had been besieging Washington by correspondence and personal interview even as early as the previous autumn, but he had repeatedly declared that he would enter his work free from promises or engagements of any kind.²⁴ There were certain guiding principles which he necessarily followed in making his appointments.²⁵ He probably shared in a prevailing sentiment of that time that a man

²² It is not the intention to give a complete account of the action of Congress in the formation of this first tariff act under the Constitution.

²³ An act for laying a duty on Goods, Wares and Merchandises imported into the United States, An Act imposing duties on Tonnage, An Act to regulate the Collection of the Duties Statutes at Large, I. 24, 27, 29.

²⁴ Writings of Washington, Ford's Edition, IX. 349.

²⁵ See on this point, Office-seeking during Washington's administration, by G. Hunt, *American Historical Review*, I. 270-283.

had a property right in the retention of his office. This is well illustrated in a letter he wrote to Benjamin Harrison of Virginia. Colonel Parker had resigned his position as naval officer of Norfolk in order to take his seat in Congress, and the Council had chosen William Lindsay to succeed him. In the meantime Harrison applied to Washington for the office as soon as a Federal law should commence operation, and in reply Washington said, in part: "I wish you had pursued the policy which the gentlemen who now occupies it [the office] has done, of obtaining the appointment from the executive of this State. Although that gentleman was an officer, yet he is quite unknown to me, and therefore I cannot speak at all upon the ground of comparative claims of personal merit. I conceive, however, it will be found no pleasant thing, possibly very much the reverse, to displace one man under these circumstances of actual occupancy, merely to make room for another, however considerable his abilities, or unimpeached his integrity may appear to the public eye."²⁶

The list of appointments was received by the Senate on August 3. A majority on the list had been in service under the state governments and formed exactly what was needed to carry out the new regulations, a trained body of officials. Within the next two days the Senate approved nearly all the appointees, delaying action upon three for want of more information, and flatly rejecting only one, Benjamin Fishbourn of Savannah. For the last the President promptly supplied a substitute.²⁷

It was obviously impossible for the impost law to go into operation on the day prescribed in the act, August 1. But beginning with the organization of the New York custom house on August 5, the national system was extended as rapidly as news

²⁶ Writings of Washington, XI. 367. Lindsay was later continued by Washington.

²⁷ Journal of the Executive Proceedings of the Senate, I. 9 et seq. The President defended Fishbourn vigorously, giving reasons for his appointment.

could be received of the appointments, the time varying from the fifth to the last of August.²⁸ In the interval, from the beginning of the month to the time when the notice was received in the respective states, several importations took place upon which in some cases duties were paid under the state laws while in others none at all were paid. The question arose as to whether the United States, having no officers to make the collections at the time, could collect later. Hamilton, placed at the head of the Treasury Department in September, believed it to be a clear point that the duties on all goods imported after August 1, accrued as debts to the Federal government, the regulations prescribed by the collection law for securing the payments being merely auxiliary guards, not essential pre-conditions. Accordingly, not feeling at liberty to waive the claims for such duties, he instituted proceedings some months later, with a view to a legal decision.²⁹ At the same time he suggested to Congress the advisability of relinquishing these claims. It had not been expected by importers that the payment of duties during the transitional period would be demanded. The claim could be enforced only after favorable legal decisions in nearly every specific case, a proceeding which generally would be regarded as quite rigorous. Furthermore, in some cases, actual injury would result if the claims were pressed. For instance, merchants had sold their goods without

²⁸ A short report by Hamilton dated March 4, 1790, containing an abstract of the net proceeds for the duties on imports and tonnage to December 31, 1789, gives the time at which the law went into operation in each of the eleven states. According to this, the collections began in New Jersey and Delaware August 1 (plainly a mistake, as the appointments were not sent to the Senate until August 3), in New York, August 5, in Maryland, Pennsylvania and Massachusetts, August 10, in New Hampshire and Connecticut, August 11, in Virginia, August 17, in Georgia, August 22, and in South Carolina, August 31.

²⁹ Report of Hamilton, April 23, 1790, On the Operations of the Act laying Duties on Imports.

reference in the price to the duty; agents had settled accounts and paid over the proceeds of goods to their principals; and duties had been paid in some cases under state establishments. Finally, even if the justice and legality of the claims were established, it would still be difficult to determine the exact sums due on importations which had occurred several months before the claims were presented.

Congress took no action on the Secretary's recommendation, but these demands seem never to have been pressed. The difficulties were evidently too great, and the compensation too slight to carry to a judicial decision so unpopular a claim. At most the returns would not have exceeded a few hundred dollars—far too small a matter for which to risk the good will of the importers at the very commencement of the new system.³⁰

There were other questions which caused considerable vexation to the merchants and which the states themselves had to settle. Two such questions came before the Supreme Executive Council of Pennsylvania for decision. On August 4, the state collector, Sharp Delany, laid before the Council a statement of the various limitation provisions in the impost and tonnage acts passed by the assembly since 1783. It appeared that some of the acts were without limitations, while some were limited "until that part of the resolve of Congress of April 18, 1783, be acceded to by each and every of the thirteen United States, and from thence to the End of the next Sitting of the Assembly and no longer"³¹—a condition never fulfilled. The collector now wished

³⁰ In New Hampshire the revenue from the imposts went into the state treasury until August 11, the collector being allowed ten per cent of the duties to that date. New Hampshire State Papers, XXI. 735. Had Hamilton pressed the United States government claims, petitions would have been presented to the state government for rebate, but no such petitions appear to have been made.

³¹ Act of September 25, 1783. Session laws of Pennsylvania. See also act of September 20, 1785.

for directions as to how far these acts were superseded by the laws of the United States, though at the same time he called attention to the fact that should the state laws remain in force, there would be no benefit to the state treasury, for according to the new Constitution the proceeds of the collection would go into the treasury of the United States. But admitting that the state laws were superseded by the Federal law, there was a second matter upon which the collector was not sure of his position. The state laws had provided that if goods upon which duties had been paid should be re-exported within a certain time and under certain conditions, the whole of the duty would be returned. The merchants of Philadelphia had imported goods before the first of August upon which they had paid state duties, and, in the course of their business were daily exporting such goods after the first of August and demanding drawbacks. The question was, under these circumstances were they entitled to drawbacks?³²

These questions were at once referred by the Council to a special committee with instructions to consult the judges of the Supreme Court and the attorney general.³³ Four days later the committee reported the following opinion from the judicial officers: "In answer to the first question, we conceive that all the acts and parts of acts of Assembly of the State of Pennsylvania, so far as they authorize or require imposts or duties to be paid to the use of the said commonwealth, upon goods, wares and merchandize imported within the said State, have ceased to have any legal operation or binding force.

"To the second question, as the authority and powers of the Collector and Naval Officer of the State of Pennsylvania have ceased with respect to any future act to be done by them, as such it appears to us, that no drawback or return of the duties paid, or secured to be paid, can be made to the merchants or persons who may propose to export the goods, etc., agreeably to the pro-

³² Pennsylvania Archives, XI. 597.

³³ Colonial Records of Pennsylvania, XVI. 124.

visions made by the said acts of Assembly, without the aid of the legislature."³⁴

This opinion was accepted and concurred in by the Council, and sent to Sharp Delany as an answer to his questions. It was satisfactory to the merchants in so far as state duties were concerned, but not in regard to drawbacks, and so, taking the hint from the judges' answer that the legislature might be able to offer assistance, they petitioned the assembly a few days later for relief. After considerable opposition, favorable action was taken by the close vote of twenty-five to twenty-three. Delany was declared to be state collector still on all goods imported before August 1 and as such was bound to account for all duties or bonds for duties received before that time, and to pay drawbacks on any goods exported which had been imported previous to August 1.³⁵

In Virginia Governor Beverley Randolph issued a proclamation July 21, commanding the state revenue officers to cease the exercise of their powers from and after the first of the following August. The books and papers of the local officers were to be sent to Richmond for preservation. At least one collector however, Charles Lee of Alexandria, interpreted this not to include bonds which he held against merchants for duties on goods imported before August 1. He decided to retain such bonds and make the collections himself as they fell due after August 1, for, as he wrote the governor, by so doing he would receive a commission of one per cent, the merchants would pay the bonds more conveniently there than at Richmond, and the duties would be received at the state treasury more promptly.³⁶ This was evidently satisfactory to everyone concerned.

As compared with the lax enforcement of the various state laws, the strict observance required of the Federal law gave

³⁴ Colonial Records of Pennsylvania, XVI. 128, 129.

³⁵ Session Laws of Pennsylvania, September 29, 1789.

³⁶ Calendar of Virginia State Papers, V. 18.

an air of rigor to the new system. A good example of this is furnished by contrasting the different policies pursued in regard to the payment of bonds. Under the old system when bonds became due, the time of payment was frequently extended, or partial payments received, at the convenience of the debtor. But under the new system this was changed. Shortly after taking office, Hamilton sent out a circular letter to the revenue officers directing them to immediately put in suit bonds which were not paid as they fell due. On this point, he wrote, "the most exact punctuality will be considered as indispensable."³⁷ He regarded this strictness as not only necessary to the public business, but as also eventually most convenient to importers, for, according to the act to regulate the collection of duties, no person against whom there was an unsatisfied bond could be allowed future credit until such bond was fully paid.

Smugglers, too, soon came to realize the energetic character of the new administration. Accustomed to ply their trade almost with impunity, they now found that infractions of the law were followed by vigorous prosecution. Before the first month of the new regime had gone by several of these offenders were caught and heavily fined.³⁸

Another effect of the federal Constitution upon state laws passed during the period of the Confederation is presented in the discontinuance of the state admiralty courts after 1789.

During the colonial period, vice-admiralty courts had been established in the different colonies, the commissions emanating from the crown. They had, added to the usual jurisdiction, the cognizance of all cases of seizure afloat for the violation of the revenue laws. For this reason they were very unpopular at the outbreak of the Revolutionary war. Nevertheless the need of some such court was patent, and upon the recommendation of

³⁷ Maryland Journal, January 12, 1790.

³⁸ American Museum, VIII. Appendix 4, p. 4. The newspapers also speak of the activity of the government in this respect.

Congress of November 25, 1775,³⁹ admiralty courts were generally erected by the states. In some instances there was merely a change in the personnel of the judges, the old courts being retained. In others, new courts were established with well defined powers. Amendments were passed from time to time until by 1789 much dissimilarity existed in the jurisdiction exercised in different states. But no matter what the provisions of the various laws, they were alike forceless after the organization of the new government.⁴⁰

One of three courses was open to the state legislatures. They might take no action whatever upon the subject, in which case their admiralty laws would become obsolete through the precedence of the Federal Constitution and laws; they might omit to make provision for the admiralty courts in the re-codification of the state laws or in the revised state constitutions, which omission would amount to a repeal; or they might specifically repeal parts or all of their admiralty laws. As it turned out, each of the three courses was followed by about an equal number of states.

Pennsylvania, one of the states which adopted the last method, apparently feared that the judge of the admiralty might be legally able to hold the state for his salary even after he no longer had any court over which to preside. At any rate the act of December 7, 1789, recited the fact that the United States District Court had exclusive jurisdiction of admiralty causes and declared it inexpedient to continue a salary after the duties of the office had ceased. Francis Hopkinson was the last judge of the admiralty of Pennsylvania, but upon the passage of the United States judiciary act in September, Washington appointed him United States district judge for the district of Pennsylvania. He himself had

³⁹ *Journal of the Continental Congress*, new ed., III. 373.

⁴⁰ Article III, section 2, of the Constitution, provides that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction.

evidently come to the conclusion that the state law was superseded and void even before the passage of the act of Decemebr 7, for under date of November 6, 1789, he advised the Council to take some measure for the safe keeping of the records of the "late court of admiralty." The last recorded payment of salary to Hopkinson as judge of the admiralty was for the quarter ending September 13, 1789.

In Virginia an act of December 22, 1788, provided that the cases in which the court of admiralty had jurisdiction, and which were not taken away by the Constitution of the United States, were to be transferred to the district courts of the state. Another act, a few days later, discontinued the salaries of the admiralty judges, and the court of admiralty, after March 4, 1789.⁴¹

The naturalization clause of the Federal Constitution transferred also to the central government power which the states had exercised under the Articles of Confederation. The provision of the Articles that the free inhabitants of each of the states be entitled to all the privileges and immunities of free citizens in the several states, had only rendered more chaotic a condition already bad enough. States with stringent naturalization rules soon had cause for complaint against the states with easy admission requirements. It was felt that there ought to be a uniform practice, and this feeling, expressed in the Convention, led to the provision in the Constitution that Congress should have power "to establish a uniform rule of naturalization." Nothing was done in the first session of Congress to provide such uniformity, but in 1790, following a recommendation in Washington's first annual message, the first Federal law upon the subject was passed.⁴² "The governing ideas," says Maclay in his report of the debate in the Senate over the bill, "seemed to be the following: That the holding property was separable from and not absolutely connected with naturalization; that laws and regulations relating to property, not

⁴¹ Hening, XII. 769.

⁴² United States Statutes at Large, I. 103.

being among the powers granted to Congress, remained with the different states⁴³ There is no record of any of the states specifically repealing their old naturalization laws upon the passage of the national act, but, exercising the right which Maclay says remained to them, several of them did pass acts prescribing the terms upon which foreigners could hold property within their boundaries.

Again, under the Articles of Confederation, the states shared with Congress the power of coining money, of emitting bills of credit, and of making their promissory notes a legal tender for debts, while the new Constitution placed such powers in the hands of Congress alone.⁴⁴ Those states which had established mints were forced to suspend operations,⁴⁵ while at the same time provision had to be made to take the state paper money out of circulation.⁴⁶ Hamilton's funding measure, too, upset the states' financial legislation. All had taken some action to provide for their public indebtedness, but after the passage of the assumption measure in 1790 they were enabled either to repeal these special measures or to turn the proceeds arising from this legislation to other accounts. Massachusetts had passed an excise act in March, 1790, the revenue from which it was proposed to appropriate to the payment of interest on the debt of the commonwealth. But in the following June the probability of the success of the national funding scheme was so great that the legislature was

⁴³ William Maclay, *Sketches of Debate in the First Senate of the United States*, p. 181.

⁴⁴ Art. I, section 8, clause 5; and section 10, clause 1.

⁴⁵ Thus the legislature of Connecticut in May, 1789, suspended a license previously granted to certain persons in New Haven to manufacture copper coin. *Gazette of the United States*, July 8, 1789.

⁴⁶ A correspondent of the *New Jersey Journal and Political Intelligencer*, October 7, 1789, concluded that the New Jersey paper money had not had, since the previous March 4, any legal tender value in compulsory payments of debts.

induced to repeal conditionally the act of the previous March.⁴⁷ When the legislature met again the following September, the funding scheme was an assured fact, and so the state excise law was finally and unprovisionally repealed. North Carolina, in December, 1789, as a means for the payment of the state debt, levied a tax of two shillings per hundred acres of land, five shillings per £100 value of town lots with their improvements, and five shillings per poll. This was to be in force till the state debt was paid, but the passage of the national assumption act a few months later rendered this tax unnecessary, and it was repealed in December, 1790.⁴⁸ In New Jersey an act passed in 1787 to raise £12,500 per annum for twenty-two years to pay interest on the state debt was repealed November 18, 1790.

The old Congress had, in 1785, taken advantage of its right to regulate the coinage, and had adopted the decimal system, but had taken no action to displace the worn out currency with coinage of the new system. As a result the states simply kept their old systems in force. This chaotic condition of the currency existed until 1792 when Congress passed remedial legislation. The decimal system was definitely established, and provision made for the coinage of a large amount of new currency. It thus became a matter of convenience for the states to have the same legal money of account as the United States, and one after another they gradually adopted the decimal system.

In two additional ways the central government after 1789 lessened the expenditures of the state governments—by its maintenance of lighthouses and by its payment of military pensions. By act of August 7, 1789, Congress provided that the expenses of keeping lighthouses, beacons, buoys, and public piers in order should be borne by the United States after August 15, 1789, provided cessions of such should be made to the United States within one year. The measure was so obviously calculated to

⁴⁷ Laws of Massachusetts, II. 87, June 24, 1790, Ch. xiv.

⁴⁸ Laws of North Carolina, Iredell's ed., 1791, pp. 666, 701.

produce more uniformity in the regulation of commerce, at the same time considerably reducing the running expenses of the states, that nearly all such places were ceded to the central government within a few months. The acts of cession were usually short and to the point, containing little beyond the mere transference of the place in question. The Pennsylvania act declared it was necessary to make the cession in order that the power of Congress over commerce might be carried into effect. The preamble to the Delaware act reported that Delaware was "desirous to promote general regulations respecting lighthouses, beacons, boys [*sic*] and public piers." New York and New Hampshire provided that if the United States should make any compensation to other states for like cessions, such compensation should be made to them in proportion to the respective values.

The payment of military pensions had been made, during and after the war, by the various states, the laws of which on this subject had been as varied as could possibly be the case with thirteen distinct legislatures struggling with the question. But by a resolution of June 7, 1785, Congress had recommended to the states definite and uniform provisions for officers, soldiers and seamen disabled in the service of the nation. Regulations for carrying out these provisions were to be left to the legislatures, and state officers rather than national officers were to pass upon the eligibility of persons applying for pensions. The total amount paid out by a state for such purposes was to be deducted from the requisitions of Congress upon that state. It is to be noticed, however, that this "deduction" did not lessen a state's expenses, for the requisitions against it had to be increased proportionately. Instead of being a party to the transaction, and of making payments directly to the pensioners, the states in theory now passed the money over to Congress, which handed it back to be distributed. In this, as in other matters, the states became the agents of Congress simply because the Articles of Confederation provided no point of contact for the central government with

the individual. This defect was remedied in the Federal Constitution, and an act was passed in the first session of Congress providing that these military pensions should now be paid by the United States under such regulations as the president might direct.⁴⁹ In the middle of October, 1789, Secretary of War Knox sent out a circular containing the regulations under which the payments were to be made. The pensions for the year beginning March 4, 1789, were to be paid in two instalments,—March 5, 1790, and June 5, 1790.⁵⁰ States were to furnish lists of their pensioners before the first payment was due. A second circular was issued January 28, 1790, giving more detailed information as to the places of payment, and naming the persons who were to make the disbursements.⁵¹

Both by the maintenance of lighthouses and by the administration of these new pension laws did the new central government impress the individual. It not only encountered the individual at more points than had the government under the Confederation, but it demanded a greater respect than had been shown its predecessor. It was to be satisfied with no divided allegiance. Its Constitution and laws were to be supreme over state constitutions and laws, and to insure supremacy state officers were to be bound by oath to give proper support. The first act passed by Congress⁵² prescribed the form of the oath and enacted that it should be administered to persons in office within one month after the first of the following August, and

⁴⁹ This law provided for the payment only from March 4, 1789, to March 4, 1790, but subsequent laws extended the time indefinitely.

⁵⁰ This long delay probably produced considerable suffering, to alleviate which at least one state, Pennsylvania, advanced monthly sums to the pensioners during the winter 1789-1790. These were to be re-paid to the state March 5, 1790. Act of November 20, 1789.

⁵¹ Maryland Journal, February 12, 1790.

⁵² June 1, 1789. An act to regulate the time and manner of administering certain oaths. Statutes at large, I. 23.

to persons thereafter filling the offices before they entered upon their duties.

Five months before the passage of this act the Connecticut assembly had taken the initiative and had prescribed an oath of fealty to the new Constitution. This was the only legislature to take action before the passage of the Congressional act. The Connecticut act was repealed the following October without any explanation, but possibly it was felt that the act of Congress was all-sufficient, possibly also because the oath prescribed by the state was slightly different from that of Congress. In May a grand jury of Washington county, Virginia, had presented as a grievance the want of a law giving the form of an oath of fidelity to the federal government. According to the jury, the existing officers had been placed in a serious position; no oath or affirmation had been provided by the last assembly, and no future assembly could remedy the evil because, they said, "we find they are precluded by Article 1st where it is said, 'no *ex post facto* law shall be passed.'"⁵³ No remedy was suggested, but the publication of the Act of Congress in the Virginia papers early in the following July probably eased the minds of those sticklers of form.

The Act of Congress, in itself, without state action, was sufficient to carry the provision of the Constitution into effect. But the idea that the state governments were intermediary between Congress and the people could not be uprooted at once. The states may also have felt that no outside government should be permitted to prescribe a form of oath for state officers without consent of the legislature. Whatever the cause, the majority of the legislatures re-enacted the federal law. New York made the neglect or omission of the oath a misdemeanor, indictable and punishable by fine and imprisonment. On the other hand, the legislature of North Carolina in 1790 refused by a large majority to take the oath to the national Constitution. The New Hamp-

⁵³ Pennsylvania Packet, June 30, 1789.

shire legislature in June, 1789, re-enacted the Congressional law. In the following January the same body passed an interesting resolution, showing that it recognized an important change in the character of the state government, in consequence of the change in the national government. This resolution, after stating that the adoption of the Federal Constitution had made necessary some alterations in the oath of allegiance to the state, prescribed by the state constitution, directed that in the future administration of the oath, the word "confederated" be substituted for the words "sovereign and independent."⁵⁴ A related subject to the foregoing was the question of the eligibility of persons to hold office simultaneously under both state and national governments. Each one of the thirteen states, with the exception of Rhode Island, passed laws or resolutions, or incorporated provisions in the state constitutions upon this subject, and usually such eligibility was denied. In agitating the question it was observed that a person could not serve "two sovereign organizations" at the same time. It was felt too that certain departments of government should be kept separate, and the danger of collision between the state and national governments was dwelt upon. Of more operative influence was the simple reason that a man could not be in two places at once—the duties of one office would interfere with those of the other. Two or three examples of state action will suffice to illustrate the general feeling. The New York assembly passed a series of resolutions in January, 1790, taking the singular and untenable position that it was incompatible with the United States Constitution for any person holding an office under the United States government to have a seat at the same time in the state legislature. This action rendered vacant the seats of four state senators, among them United States District Judge James Duane, and United States Senator Philip Schuyler. The mischievous effect of this form of plural office holding was experienced by the first Congress in the case of Charles Carroll,

⁵⁴ State Papers of New Hampshire, XXI. 726.

Senator from Maryland. Carroll was also a member of the state senate, and during 1790 and 1791 absented himself from Congress during the early winter until the adjournment of the state legislature. Notwithstanding his vigorous opposition, the state legislature passed an act in December, 1791, incapacitating United States officers and members of Congress from holding office under the Maryland government. From Massachusetts one of the first representatives to Congress was a probate judge, another was a sheriff. Governor Hancock, at a loss as to the proper mode of procedure in such cases, sent a special message to the legislature asking its advice. The latter replied that if the probate judge continued to hold both his offices a future legislature would authorize the governor to name some other person to execute the duties of the office of probate judge. As to the sheriff, such officers were removable at the pleasure of the executive, and therefore the legislature declined to advise the governor on that point.⁵⁵ In January, 1790, after a long debate occasioned by a specific case, it was voted by a large majority that persons holding government offices, similar in nature to those state offices declared by the constitution of Massachusetts incompatible with the holding of seats in the legislature, could have no constitutional right to retain their seats.⁵⁶ Perhaps the most interesting debate occurred in 1791, when David Sewall, United States District Judge, appeared to claim his seat as a duly elected member of the legislature from York. In the course of the consideration of his eligibility, it was held that he occupied a place of profit and trust under a foreign government, and for this reason, and the additional one that the legislature and judiciary should be kept separate, Sewall was excluded by an almost unanimous vote.⁵⁷

⁵⁵ *Laws and Resolves of Massachusetts*, 1788-1789, p. 744.

⁵⁶ *Massachusetts Centinel*, January 23, 1790.

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II. **Official publications exclusive of laws.** These include the Journals and Minutes of the several state assemblies, reports of state legislative committees, Journals of the two Houses of Congress, and reports of various officials and committees to Congress. Not all of the state legislatures printed their Journals from session to session, but more recently several of the states have printed large collections of invaluable historical material, including legislative Journals, calendars of documents, official letters, etc.

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INDEX

- Adams, John, 2 (note).
Adams, Samuel, candidate for Congress from Massachusetts, 57.
Adgate, —, member of New York assembly, 24.
Admiralty courts, 97-99.
 discontinued by Pennsylvania, 98.
 discontinued by Virginia, 99.
Allison, John, nominee for Congress from Pennsylvania, 36.
Ames, Fisher, elected to Congress from Massachusetts, 57.
Annapolis, proposed seat of federal government, 6.
 Federal caucus at, 47.
Antifederal party, gains advantages from delay in 1788, 8.
 elects senators from Virginia, 17, 18.
 strong in sections of Pennsylvania, 32.
 holds state convention at Harrisburg, Pennsylvania, 1788, 34, 78.
 in minority but active in Maryland, 47-49.
 Maryland law works against, 50.
 elects four representatives from South Carolina, 51, 52.
 controls lower house of New York legislature in 1788, 54, 74.
 loses ground in the New York elections, 54, 55.
 controls Virginia assembly, 59, 70.
 nominates Monroe to oppose Madison, 62.
 strength declines in Massachusetts, 56.
 supposed plan to carry presidential election, 77.
 discouraged by result of congressional election in Pennsylvania, 78
 (note).
Appointments of revenue officials, 91, 92.
Articles of Confederation, attempts to amend, 1, 2.
 relations between states and central government under, 84.
 and naturalization, 99.
 monetary provisions, 100.
 provide no contact of central government with individual, 102.
Ashe, J. B., elected to Congress from North Carolina, 64.
Atherton, Joshua, candidate for Congress from New Hampshire, 39.
Bailey, T., candidate for Congress from New York, 55 (note).

- Baldwin, Abraham, 3.
elected representative from Georgia, 51.
- Baltimore, proposed seat of federal government in 1788, 4, 5.
Federal meeting at, 48.
- Banning, John, presidential elector from Delaware, 79.
- Bartlett, Josiah, elected senator from New Hampshire, 18.
declines to serve, 18.
- Basset, Richard, elected senator from Delaware, 16.
- Bedford, Gunning, nominee for senator from Delaware, 16.
candidate for Congress from Delaware, 63 (note).
presidential elector, 79.
- Belknap, Jeremy, 33.
- Bellows, General, candidate for presidential elector in New Hampshire,
80 (note).
- Benson, Egbert, elected to Congress from New York, 55.
- Berkshire county, Massachusetts, opposes mode of congressional election,
56.
- Bishop, Phaniel, candidate for Congress from Massachusetts, 56 (note).
- Bland, Theodorick, elected to Congress from Virginia, 60, 63 (note).
- Bloodworth, Timothy, elected to Congress from North Carolina, 65.
- Boudinot, Elias, nominee for senator from New Jersey, 20, 21.
elected to Congress from New Jersey, 40-43.
- Bourne, Benjamin, elected to Congress from Rhode Island, 65, 66.
- Brooks, General J., candidate for Congress from Massachusetts, 57, 58
(note).
- Brown, John, elected to Congress from Kentucky district, 63 (note).
- Burke, Aedanus, elected to Congress from South Carolina, 52.
- Butler, Pierce, elected senator from South Carolina, 22.
- Cabell, Colonel (Samuel J.), candidate for presidential elector from Vir-
ginia, 77.
- Cadwalader, Lambert, candidate for Congress on West Jersey ticket, 40,
43 (note).
declared elected, 43.
- Camden district, South Carolina, elects Thomas Sumter to Congress, 52.
- Carrington, (Edward), member of Congress, 3.
friend of Madison, 17.
- Carroll, Charles, elected senator from Maryland, 21, 22.
plural office-holder, 105, 106.

- Carroll, Daniel, candidate for Congress from Maryland, 48 (note).
elected, 49.
probable election even had the law been changed, 50.
- Caucus, secret, in New Jersey, 40.
antedated Maryland caucus, 41 (note).
in Maryland, 47.
- Chambers, Stephen, candidate for Congress from Pennsylvania, 36.
- Chester, John, candidate for Congress from Connecticut, 38 (note).
- Citizenship in the United States, methods of acquiring, 53.
- Clark, Abraham, nominee for senator from New Jersey, 20, 21.
in the congressional election, 43 (note).
contests the New Jersey election, 44.
- Clayton, Joshua, candidate for Congress from Delaware, 63 (note).
- Clinton, Governor George, re-elected governor of New York, 1789, 26.
convenes assembly in special session, 26.
message to assembly relative to presidential electors, 74.
mentioned for the vice-presidency, 77.
receives three votes, 83.
- Clymer, George, candidate for Congress from Pennsylvania, 36.
elected, 36, 37.
- Coleman, Robert, nominee for senator from Pennsylvania, 15.
- Coles, Isaac, elected to Congress from Virginia, 60, 63 (note).
- Comstock, Job, candidate for Congress from Rhode Island, 65.
- Congress, under the Confederation, fails to secure right of taxation, 2.
attitude towards the new Constitution, 2 (note).
transmits the Constitution to the states, 2.
provides details for putting the new government into operation, 3-9.
poor method of voting, 4.
method of election of members from New York, 24.
from New Hampshire, 72 (note).
power over monetary matters, 100, 101.
recommends military pensions, 102.
- Congress, under the Constitution, should decide on permanent capital, 5.
attempt to force a call for a second general convention, 16.
judges the qualifications of members, 32.
proposed qualifications of members from Pennsylvania, 35, 36.
proper persons to send to, 41.
asked to throw out the New Jersey election, 43-46.
case of *Smith vs. Ramsey*, 52, 53.
and the appointment of presidential electors, 67.
probable attitude toward New York election, 76.

- power over revenue, 87-90.
 - passes first national revenue measures, 90, 91.
 - passes naturalization law, 99, 100.
 - monetary powers, 100, 101.
 - passes act relative to light houses, 101.
 - provides military pensions, 103.
 - prescribes form of oath for officers, 103, 104.
- Connecticut, election of United States senators, 16.
- election of members of Congress, 37, 38.
 - scant material on the congressional election, 37, 51.
 - appointment of presidential electors, 73, 87.
 - has free trade after January, 1789, 89.
 - national tariff goes into effect in, 93 (note).
 - suspends license to manufacture coin, 100 (note).
 - prescribes a form of oath to the federal Constitution, 104.
- Constitution of the United States, provision for ratification, 2.
- is transmitted to Congress, 2.
 - supporters promote delay, 4.
 - not ratified by North Carolina in 1788, 6.
 - attempt to thwart by calling a second general convention, 16.
 - provision as to choice of senators, 19.
 - carried into effect in New Jersey, 20.
 - avored by new senators from South Carolina and Georgia, 22.
 - ratified by North Carolina, November 21, 1789, 28.
 - provisions as to choice of representatives, 31, 32.
 - revision discussed, 34.
 - defects of, 34.
 - opposed because of slavery provisions, 39.
 - ratified unanimously in Georgia, 51 (note)
 - how ratified in Massachusetts, 56.
 - question of adoption, 76.
 - changes relations between states and general government, 84.
 - revenue provisions, 87.
 - effect on state revenue laws, 87-89, 95.
 - effect on state admiralty courts, 97.
 - provision as to naturalization, 99.
 - monetary provisions, 100.
 - supreme over state laws and constitutions, 103.
- Contee, Benjamin, elected to Congress from Maryland, 48 (note), 49.
- Contested elections, New Jersey case, 43-46.
- William Smith case, 52, 53.
- Conventions, political, in Pennsylvania, 33-36.

- Convention of 1787, 1.
transmits Constitution to Congress, 2.
- Convention, movement for a second, 16.
- Corbin, George, friend of Madison, 17.
attorney-general of Virginia, 88.
- Council of Revision of New York, 26, 27.
- Cox, John, candidate for Congress from New Jersey, 41.
- Cumberland county, Pennsylvania, in the congressional election, 36.
- Dalton, Tristram, nominee for senator from Massachusetts, 19.
elected senator, 20.
- Dane, Nathan, nominee for senator from Massachusetts, 20.
- Dawes (of Massachusetts), member of assembly, 19.
- Dayton, Jonathan, candidate for Congress from New Jersey, 41, 43 (note).
- Deadlock in Pennsylvania assembly over election of senator, 11-16.
in Massachusetts assembly, 19.
in New York assembly, 22-25.
in New Hampshire assembly, 80.
- Decimal system in coinage of money, 101.
- Delany, Sharp, revenue collector in Pennsylvania, 94-96.
- Delaware, first state to ratify Constitution, 3.
on the location of a national capital, 4, 7, 8.
election of senator from, 16.
election of representative from, 63, 64.
appointment of presidential electors, 69, 73 (note), 79.
free trade in, after separation from England, 85.
national tariff act goes into effect in, 93 (note).
cedes light houses to central government, 102.
- Dent, George, candidate for Congress from Maryland, 47 (note), 50.
- District *vs.* general ticket systems for the election of United States representatives, 31.
- Duane, James, member of New York assembly, 24.
nominee for senator from New York, 28.
excluded from state senate, 105.
- Edwards (Pierrepoint), in Congress, 3.
- Election of United States senators, 10-30.
- Election of United States representatives, 31-66.
variety of laws for, 32.
time in the several states, 66 (note).
law for, in Pennsylvania, 33.
in Connecticut, 37.

- in New Hampshire, 38.
 - in New Jersey, 39, 40.
 - in Maryland, 47.
 - in Georgia, 50.
 - in South Carolina, 51.
 - in New York, 54.
 - in Massachusetts, 55, 56.
 - in Virginia, 59, 60.
 - in Delaware, 63.
 - in North Carolina, 64.
 - in Rhode Island, 65.
 - summary of laws, 66.
- Electioneering despised in Massachusetts, 56.
- Electors, presidential, (see presidential electors).
- Elizabethtown, meeting-place of New Jersey council, 42.
- Ellis, Joseph, candidate for Congress from New Jersey, 41.
- Ellsworth, Oliver, elected senator from Connecticut, 16.
- Elmer, Jonathan, elected senator from New Jersey, 20, 21.
- Essex county, New Jersey, in the congressional election, 42, 43.
- Faw, A., candidate for Congress from Maryland, 47 (note).
probably a Federalist, 48 (note).
- Fayette county, Pennsylvania, has no interest in presidential election, 78.
- Federal party, nominates Madison as senator from Virginia, 16.
is strong in Pennsylvania in 1788, 32.
holds state convention in Pennsylvania, 34-36.
wins election in Pennsylvania, 36, 37.
manipulates election law in Maryland, 50.
elects four congressmen from New York, 55.
stronger over Virginia than in the state assembly, 70.
holds majority in New York senate, 74.
Lancaster convention, 77.
- Few, William, elected senator from Georgia, 22.
- Findley, William, candidate for Congress from Pennsylvania, 34.
- Fishbourn, Benjamin, non-confirmed by United States Senate, 92.
- Fitzsimons, Thomas, elected to Congress from Pennsylvania, 36, 37.
- Floyd, William, elected to Congress from New York, 54, 55.
- Forrest, Uriah, nominee for senator from Maryland, 21, 22.
- Foster, Abiel, candidate for Congress from New Hampshire, 38 (note).
elected to fill vacancy, 39, 39 (note).
- Foster, Theodore, elected senator from Rhode Island, 29.

- Free trade, in Delaware after separation from England, 85.
 in New Jersey since 1783, 85.
 an interval of, 87.
 in Connecticut in 1789, 89.
- Gale, George, nominee for senator from Maryland, 21, 22.
 elected to Congress from Maryland, 48-50.
- Gallatin, Albert, in the Pennsylvania assembly, 12.
 elected senator from Maryland, 15.
 declared ineligible to sit in Senate, 15.
- General ticket *vs.* district systems for the election of United States representatives, 31.
- Georgia, proposed time for the appointment of electors in, 3.
 attitude of delegates in 1788 on location of national capital, 6, 8.
 election of senators, 22.
 assembly composed of a single house, 30.
 election of representatives, 50, 51.
 unanimous ratification of the constitution, 51 (note).
 passes no law for the appointment of presidential electors, 73.
 appointment of presidential electors, 81, 82.
 casting of electoral vote, 83.
 tonnage duties, 86, 87.
 revenue law, 90.
 national tariff act takes effect in, 93 (note).
- German voters in Pennsylvania, 36, 37.
- Gerry, Elbridge, elected to Congress from Massachusetts, 57, 58.
- Gerrymandering in Virginia, 61 (note).
- Gilman, Nicholas, elected to Congress from New Hampshire, 38, 39.
- Goodhue, Benjamin, elected to Congress from Massachusetts, 58.
- Gorham, Nathaniel, candidate for Congress from Massachusetts, 57, 58
 (note).
 withdraws candidacy, 58.
- Grayson, William, elected senator from Virginia, 17, 18.
- Great Britain, tariff discrimination against, 85, 86.
- Griffin, Samuel, elected to Congress from Virginia, 63 (note).
- Grout, Jonathan, elected to Congress from Massachusetts, 58.
- Gunn, James, elected senator from Georgia, 22.
- Hamilton, Alexander, on the location of the seat of government, 7.
 on the appointment of electors in New York, 75 (note).
 Secretary of the Treasury, 93.
 enforces revenue laws, 97.
 funding measure, 100.
- Hancock, Governor John, asks advice of assembly as to plural office-holding, 106.

- Harrisburg, Pennsylvania, Antifederal convention held in 1788, 34, 78.
ticket is beaten, 36.
- Harrison, Benjamin, application for office, 92.
- Hartley, Thomas, elected to Congress from Pennsylvania, 36, 37.
- Hathorn, John, elected to Congress from New York, 55.
- Hawkins, Benjamin, elected senator from North Carolina, 29.
- Heath, General, candidate for Congress from Massachusetts, 57.
- Heister, Daniel, elected to Congress from Pennsylvania, 34, 36, 37.
- Henderson, Thomas, candidate for Congress from New Jersey, 41.
- Henry, John, elected senator from Maryland, 21, 22.
- Henry, Patrick, and the election of senators from Virginia, 16-18.
attempts to defeat Madison for Congress, 61.
elected presidential elector from Virginia, 77.
mentioned for President, 77.
- Hillhouse, James, candidate for Congress from Connecticut, 38 (note).
- Hoops (of New Jersey), votes received in the congressional election, 43
(note).
- Hopkinson, Francis, judge of Pennsylvania admiralty court, 98, 99.
- Huger, Daniel, elected to Congress from South Carolina, 52.
- Huntington, Benjamin, elected to Congress from Connecticut, 38.
- Instructions to United States senators, Madison might not obey, 17.
- Inter-state trade, 85.
- Irvine, General William, nominee for senator from Pennsylvania, 11.
candidate for Congress, 34.
- Izard, Ralph, elected senator from South Carolina, 22.
- Jackson, General James, elected to Congress from Georgia, 51.
- Jarvis, Charles, nominee for senator from Massachusetts, 19, 20.
- Jefferson, Thomas, 44 (note).
- Joint organization of the New Jersey assembly, 20.
- Johnson, William S., elected senator from Connecticut, 16.
- Johnston, Samuel, elected senator from North Carolina, 28.
- Jones (of New York), in the assembly, 24.
- Kello, Samuel, elector for Virginia, 82 (note).
- Kentucky district, against the constitution, 60 (note).
elects a Federalist to Congress, 62.
- King, Rufus, elected senator from New York, 28.
- Knox, Henry, sends out pension circulars, 103.

- Lancaster, Pennsylvania, proposed seat of federal government in 1788, 4, 6.
political convention at, in 1788, 34-36, 77.
- Langdon, John, elected senator from New Hampshire, 18.
- Latimer, George, 35.
- Lawrence, John, elected to Congress from New York, 55.
- Lee, Arthur, 2 (note).
collector at Alexandria, Virginia, 96.
- Lee, R. B., Federalism shown by private letters, 62 (note).
elected to Congress from Virginia, 63 (note).
- Lee, R. H., nominee for senator from Virginia, 17.
elected, 18.
- Leonard, George, elected to Congress from Massachusetts, 56, 57.
- Lewis, Warner, elector for Virginia, 82 (note).
- L'Hommedieu, Ezra, in the New York assembly, 24.
nominee for senator from New York, 28.
- Lighthouses to be maintained by general government, 101, 102.
- Lindsay, William, succeeds Parker as naval officer, 92 (note).
- Livermore, Samuel, candidate for Congress from New Hampshire, 38
(note).
elected, 39.
- Livingston, B., member of New York assembly, 75.
- Livingston, G., member of New York assembly, 24.
- Livingston, Governor William, instructs delegates to Congress on location
of capital, 7.
issues proclamation declaring results of Congressional election, 43.
- Lowell, John, nominee for senator from Massachusetts, 19.
- Luzerne county, Pennsylvania, unrepresented in state convention of Federalists, 36.
- Lyman, William, candidate for Congress from Massachusetts, 58, 59
(note).
- McClenachan, Blair, candidate for Congress from Pennsylvania, 34.
- McLane, Allen, candidate for Congress from Delaware, 63. (note).
- Maclay, William, elected senator from Pennsylvania, 1788, 11.
successor to be chosen, 11-16.
nominated for second term, 15.
on the naturalization law, 99, 100.
- Madison, James, on the location of the national capital in 1788, 8
nominee for senator from Virginia, 16-18.
prefers House of Representatives to the Senate, 17.

- on the New Jersey congressional election, 44.
 - defeated in the senatorial race, 18, 61.
 - candidate for Congress from Virginia, 61, 62.
 - elected, 62, 63 (note).
 - supporter of the Constitution, 76.
 - letter from Monroe to, 88.
 - proposes a temporary tariff act, 91.
- Martin, Alexander, governor of North Carolina, 28 (note).
- Maryland, delegates in Congress withdraw "in a temper," 7.
- not voting in location of capital, 8.
 - election of senators, 21, 22.
 - election of representatives, 46-50.
 - committee plan of election of representatives, 46, 47.
 - state convention, 47.
 - analysis of the vote for congressmen, 49.
 - method of appointment of electors, 67, 77.
 - choice of electors, 78, 79.
 - casting of electoral vote, 82.
 - revenue law, 85.
 - national tariff act in effect in, 93 (note).
 - forbids plural office holding, 106.
- Massachusetts, proposed time for the appointment of electors in, 3.
- election of senators, 18-20.
 - senators chosen by concurrent action of the houses of assembly, 30.
 - election of representatives, 55-59.
 - report of assembly committee, 55.
 - method of appointment of electors, 72.
 - comparison with New Hampshire method, 72.
 - choice of electors, 79, 80.
 - casting of electoral vote, 82.
 - revenue law, 85, 86, 90.
 - national tariff act in effect in, 93 (note).
 - excise act, 100, 101.
 - forbids plural office-holding, 106.
- Mathews, George, elected to Congress from Georgia, 51.
- Matthews, Thomas, candidate for Congress from Virginia, 60.
- Mercer, J. F., candidate for Congress from Maryland, 47 (note).
- candidacy affected by peculiar law, 50.
- Mifflin, Governor, and the senatorial situation in Pennsylvania, 14.
- Miller, Colonel Henry, nominee for senator from Pennsylvania, 15.
- Mitchell, S. M., candidate for Congress from Connecticut, 38 (note).
- Monetary changes in 1789, 100, 101.

- Monroe, James, candidate for Congress from Virginia, 61, 62.
defeated by Madison, 62.
on the state revenue law, 88, 89.
- Montgomery, William, candidate for Congress from Pennsylvania, 34.
- Moore, A., elected to Congress from Virginia, 63 (note).
- Morris, Robert, elected senator from Pennsylvania in 1788, 11.
- Muhlenberg, F. A., candidate for Congress from Pennsylvania, 36.
elected, 36, 37.
- Muhlenberg, Peter, candidate for Congress from Pennsylvania, 34, 36.
elected, 36, 37.
- Murray, W. V., candidate for Congress from Maryland, 47 (note).
probably a Federalist, 48 (note).
- Naturalization, 99.
- New Hampshire, ninth state to ratify Constitution, 3.
election of senators, 18.
choice of senators is by concurrent action, 30.
election of representatives, 38, 39.
method of certain elections under state constitution of 1784, 72, (note).
method of appointment of electors, 71, 72.
comparison with Massachusetts method, 72.
deadlock in assembly over choice of electors, 80, 81.
revenue law, 85.
national tariff act in effect, 93 (note), 94 (note).
lighthouses in, 102.
changes form of oath of allegiance to the state, 105.
- New Jersey, attitude of delegates in 1788 on location of national capital, 6,
7.
election of senators, 20, 21.
election of representatives, 39-46.
method of appointment of electors, 73.
choice of electors, 81.
allowed free trade after 1783, 85.
national tariff act in effect in, 93 (note).
paper money not legal tender, 100 (note).
levies tax to pay debt, 101.
- Newspapers, clamor over delay in 1788, 8, 9.
activity in the New Jersey election, 42.
- New York, election of senators, 22-28.
political complexion of assembly, 1788, 22, 74.
constitutional provision for conferences between the two houses of
assembly, 24.
debate in assembly over method of appointment of senators, 24, 25.

- state election of 1789, 26.
- composition of Council of Revision, 26.
- Council of Revision vetoes act of the assembly, 27.
- choice of senators is by concurrent action, 30.
- election of representatives, 54, 55.
- assembly in deadlock, 74-76.
- assembly fails to provide for choice of electors, 73-76.
- no part in first presidential election, 77, 78.
- custom house organized, 92.
- national tariff act in effect, 93 (note).
- lighthouses, 102.
- assembly re-enacts federal law prescribing form of oath of allegiance,
104.
- assembly against plural office-holding, 105.
- New York city, seat of Congress, 1787, 2.
- candidate for seat of government in 1788, 4-7.
- advantages and disadvantages of, 5.
- accepted as temporary seat of government, 8.
- repugnance of Virginia delegates to, 8.
- Ninety-six district, South Carolina, elects Aedanus Burke to Congress, 52.
- Nomination system of Connecticut, 37, 39.
- Nomination system of New Jersey, 39.
- Northumberland county, Pennsylvania, 35.
- North Carolina, attitude of delegates in 1788 on location of national capital, 6.
- state convention in 1788 fails to ratify federal Constitution, 6.
- not voting in location of capital, 8.
- unrepresented in first session of Congress, 28, 64.
- ratifies federal Constitution, 1789, 28, 64.
- election of senators, 28, 29.
- districts for first congressional election, 64, 65.
- election of representatives, 64, 65.
- revenue law, 85.
- levies tax to pay debt, 101.
- assembly refuses the oath to the federal Constitution, 104.
- Oath prescribed by Congress for officers, 103.
- prescribed by Connecticut, 104.
- lack of, a grievance in Virginia, 104.
- Orne, Azor, nominee for senator from Massachusetts, 19.
- Osborne, Henry, candidate for Congress from Georgia, 51.
- Otis, (Samuel A.), in Congress, 3.

- Page, John, friend of Madison, 17.
 elected to Congress from Virginia, 63 (note).
- Paine, Timothy, candidate for Congress from Massachusetts, 58.
- Parker, Josiah, elected to Congress from Virginia, 60, 63 (note).
 resigns position as naval officer, 60 (note), 92.
- Partridge, George, elected to Congress from Massachusetts, 57.
- Paterson, William, elected senator from New Jersey, 20, 21.
- Peabody, Nathaniel, candidate for senator from New Hampshire, 18.
- Pendleton, (Edmund), 8.
- Pennsylvania, attitude of delegates in Congress on location of national capital, 1788, 7.
 unicameral legislature, 10, 22, 30.
 political complexion of assembly, 1791-1794, 14 (note).
 election of senators, 10-16.
 constitution of 1790, 11.
 deadlock in assembly, 11-16.
 political complexion of state, 1788, 32.
 election of representatives, 32-37.
 method of appointing electors, 68, 69.
 choice of electors, 77, 78.
 casting of electoral vote, 82, 83.
 revenue law, 88, 90, 94-96.
 national tariff act in effect, 93 (note).
 discontinues admiralty court, 98, 99.
 lighthouses, 102.
 advances money to pensioners, 103 (note).
- Pensions, military, 101-103.
- Pettit, Charles, candidate for Congress from Pennsylvania, 34.
- Philadelphia, proposed capital in 1788, 4.
 delegates appointed to Federal state convention, 35.
 gives Federalist majority in congressional election, 1788, 36.
 importations of merchants, 95, 96.
- Plater, (George), presidential elector for Maryland, 82.
- Plural office-holding, 105, 106.
- Political parties, difficulty of classification, 62 (note).
 in 1789, 76.
- Potomac river, Virginia delegates favor location of capital on, 7.
- Poughkeepsie, New York, seat of state convention, 4.
- Presidential electors, proposed time for appointment of first, 3.
 final arrangements for first appointment, 8.

- questions involved in the choice of, 67.
- method of appointment in Pennsylvania, 68.
- in Delaware, 69.
- in Maryland, 69, 70.
- in Virginia, 70, 71.
- in New Hampshire, 71, 72.
- in Massachusetts, 71, 72.
- in Georgia, 73.
- in Connecticut, 73.
- in South Carolina, 73.
- in New Jersey, 73.
- summary of provisions for election of, 83.
- Princeton, meeting place of New Jersey assembly in 1788, 40.
- Ramsay, David, contests William Smith's election to Congress, 52, 53.
- Randolph, Governor Beverley, proclamation relative to import duties, 96.
- Randolph, Governor Edmund, letter from Madison to, 17.
 - describes senatorial nominations in Virginia, 17.
 - at first opposes federal Constitution, 76.
 - and the state revenue laws, 88.
- Reed, George, elected senator from Delaware, 16.
- Representatives, United States, distribution of membership, 5.
 - methods for the election, 31, 32.
 - constitutional provisions relative to the election, 31, 32.
 - first election of, in Pennsylvania, 32-37.
 - in Connecticut, 37, 38.
 - in New Hampshire, 38, 39.
 - in New Jersey, 39-46.
 - in Maryland, 46-50.
 - in Georgia, 50, 51.
 - in South Carolina, 51-53.
 - in New York, 54, 55.
 - in Massachusetts, 55-59.
 - in Virginia, 59-62.
 - in Delaware, 63, 64.
 - in North Carolina, 64, 65.
 - in Rhode Island, 65, 66.
 - summary of first elections, 66.
- Revenue laws of the states before 1789, 84-90.
 - of Massachusetts, 85, 86.
 - of Virginia, 85, 87 (note).
 - of North Carolina, 85.
 - of New Hampshire, 85.

- of Pennsylvania, 85.
- of Maryland, 85.
- of Rhode Island, 86.
- of South Carolina, 86.
- Revisions of state laws and constitutions, 84.
- Rhode Island, delegates leave Congress, 6.
 - has no vote on location of national capital in 1788, 8.
 - unrepresented in first and second sessions of Congress, 28, 64.
 - political complexion of assembly, 29 (note).
 - election of senators, 29.
 - ratifies federal Constitution, 65.
 - election of representatives, 65, 66.
 - revenue laws, 86.
 - fails to forbid plural office-holding, 105.
- Richard, Mr., presidential elector for Maryland, 82.
- Richmond, Virginia, place of deposit for state papers, 96.
- Root, Jesse, candidate for Congress from Connecticut, 38 (note).
- Ross, James, nominee for senator from Pennsylvania, 14, 15.
 - elected, 15.
- Rush, Benjamin, 33 (note).
- Schureman, James, candidate for Congress on West Jersey ticket, 40, 43 (note).
 - declared elected, 43.
- Schuyler, Philip, nominee for senator from New York, 22, 23.
 - in a conference of the two houses of assembly, 24.
 - elected senator from New York, 28.
 - excluded from state senate, 105.
- Scott, Thomas, elected to Congress from Pennsylvania, 36, 37.
- Sedgwick, Thomas, elected to Congress from Massachusetts, 58, 59.
- Senate, United States, distribution of membership, 5.
 - declares Gallatin ineligible to a seat, 15.
 - approves list of appointments, 92.
- Senators, United States, first election, 10-30.
 - election attracts little attention, 10.
 - methods of election, 10.
 - first election, in Pennsylvania, 10-16.
 - in Connecticut, 16.
 - in Delaware, 16.
 - in Virginia, 16-18.
 - in New Hampshire, 18.

- in Massachusetts, 18-20.
- in New Jersey, 20, 21.
- in Maryland, 21, 22.
- in South Carolina, 22.
- in Georgia, 22.
- in New York, 22-28.
- in North Carolina, 28, 29.
- in Rhode Island, 29.
- Seney, Joshua, candidate for Congress from Maryland, 47 (note).
 - a Federalist on the Antifederalist ticket, 48 (note).
 - elected, 49.
 - candidacy unaffected by peculiar Maryland law, 50.
- Sevier, John, elected to Congress from North Carolina, 65.
- Sewall, David, excluded from Massachusetts assembly, 106.
- Shays' Rebellion, 58.
- Sherman, Roger, elected to Congress from Connecticut, 38.
- Sinnickson, Thomas, candidate for Congress on West Jersey ticket, 40.
 - declared elected, 43.
- Sitgreaves, Samuel, nominee for senator from Pennsylvania, 15.
- Smith, William, elected to Congress from Maryland, 48 (note), 49.
- Smith, William, elected to Congress from South Carolina, 52.
 - contest over his seat, 52, 53.
- Smugglers convicted, 97.
- South Carolina, attitude of delegates in 1788 on location of national capital, 6.
 - election of senators, 22.
 - scarcity of material on political situation in 1788, 51.
 - first election of representatives, 51-53.
 - election of Antifederalists not the result of a sudden party revolution, 52 (note).
 - mode of appointment of electors, 73.
 - choice of electors, 82.
 - revenue law, 86.
 - national tariff act in effect, 93 (note).
- Stanton, Joseph, elected senator from Rhode Island, 29.
 - probable politics, 29 (note).
- Stevens, General, elector for Virginia, 77.
- Steele, John, elected to Congress from North Carolina, 65.
- Sterett, Samuel, candidate for Congress from Maryland, 47 (note).
 - candidacy affected by peculiar Maryland law, 50.

- Stone, M. J., elected to Congress from Maryland, 48 (note), 49.
- Strong, Caleb, elected senator from Massachusetts, 19.
- Strong, Jedediah, candidate for Congress from Connecticut, 38 (note).
- Sturges, Jonathan, elected to Congress from Connecticut, 37, 38.
- Sullivan, John, candidate for Congress from New Hampshire, 38 (note).
- Sumter, General Thomas, elected to Congress from South Carolina, 52.
- Supreme Executive Council of Pennsylvania, 78.
revenue questions settled by, 94-96.
- Sylvester, Peter, elected to Congress from New York, 55.
- Tariff act, first national, passed, 91.
in effect in the various states, 93 (note).
strictly enforced, 96, 97.
- Thacher, George, elected to Congress from Massachusetts, 57.
- Tonnage duties in Georgia, 86, 87.
- Travelling accommodations poor in 1788, 5.
- Treadwell, John, candidate for Congress from Connecticut, 38 (note).
- Treasury department, Hamilton placed at head of, 93.
- Trumbull, Jonathan, elected to Congress from Connecticut, 38.
- Tucker, T. T., member of committee in Congress, 3.
elected to Congress from South Carolina, 52.
- United States Congress, (see Congress).
- United States House of Representatives, (see Representatives).
- United States Senate, (see Senate).
- Van Rensselaer, Jeremiah, elected to Congress from New York, 55.
- Varnum, J. B., candidate for Congress from Massachusetts, 57, 58 (note).
- Vining, John, candidate for Congress from Delaware, 63 (note).
elected, 64.
- Virginia, attitude of delegates relative to location of capital, 1788, 7.
delegates dislike of New York city, 8.
election of senators from, 16-18.
method of voting for senators, 18 (note).
election of representatives from, 59-62.
political sections of the state, 60 (note).
districting for the first congressional election, 63 (note).
mode of appointment of electors, 70, 71.
choice of electors, 77.
casting of electoral vote, 82.
revenue laws, 85, 87 (note), 89, 96.
effect of federal Constitution upon revenue laws, 88.

- national tariff act goes into effect, 93 (note).
- admiralty courts discontinued, 99.
- Wadsworth, Jeremiah, elected to Congress from Connecticut, 38.
- Ward, Artemas, candidate for Congress from Massachusetts, 58.
- Warren, James, candidate for Congress from Massachusetts, 57.
- Washington, George, points out danger of delay in 1788, 8.
 - receives letter from Madison describing the New Jersey election, 44.
 - is the general choice for president, 77.
 - Georgia electors favor, 83.
 - besieged by office-seekers, 91, 92.
 - submits a list of appointments, 92.
 - appoints Hopkinson district judge, 98.
 - recommends a naturalization law, 99.
- Washington county, Maryland, 49 (note).
- Washington county, Virginia, 104.
- Watts, (John), member of New York assembly, 76.
- West, Benjamin, candidate for Congress from New Hampshire, 38.
 - elected but resigns, 39.
- West Indian trade, confined to British shipping, 85.
- West Jersey ticket, 40-44.
- Whig ticket, name given the Antifederalist ticket in Pennsylvania, 34.
- White, Alexander, friend of Madison, 17.
 - elected to Congress from Virginia, 63 (note).
- Whitehill, Robert, candidate for Congress from Pennsylvania, 34, 36.
- Williamson, Hugh, elected to Congress from North Carolina, 64.
- Wilmington, Delaware, proposed seat of federal government in 1788, 4, 6.
- Wilson, James, delegate to a state convention, 35.
- Wingate, Paine, elected senator from New Hampshire, 18.
 - candidate for Congress, 38 (note).
- Wolcott, Erastus, candidate for Congress from Connecticut, 38 (note).
- Wynkoop, Henry, elected to Congress from Pennsylvania, 36, 37.
- Yates, Robert, nominee for senator from New York, 23.

